STATE ETHICS COMMISSION
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STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C 2024-019

COMPLAINANT: State Ethics Commission
ADDRESS: 201 Executive Center Drive
Suite 150
Columbia, SC 29210

TELEPHONE NUMBER: (803) 253-4192

RESPONDENT: Chesterfield County Republican Party
ADDRESS: [redacted]

TELEPHONE NUMBER: (843) 287-0484

Section 8-13-1308 (G), S.C. Code Ann., 1976, as amended, requires political parties to file Operating Disclosures within ten (10) days of receiving or expending $500, within ten (10) days of the end of each quarter; and a final report when the operating account is closed.

Records of the State Ethics Commission indicate that an Operating Disclosure was due no later than July 10, 2020, October 10, 2020, January 10, 2021, April 10, 2021, July 10, 2021, October 10, 2021, January 10, 2022, April 10, 2022, July 10, 2022, October 10, 2022, January 10, 2023, April 10, 2023, July 10, 2023, October 10, 2023, January 10, 2024, and April 10, 2024.

Respondent was reminded of the filing requirements by certified letters dated July 3, 2023, August 1, 2023, and August 2, 2023 as described in the attached. To date, no properly completed July 10, 2020, October 10, 2020, January 10, 2021, April 10, 2021, July 10, 2021, October 10, 2021, January 10, 2022, April 10, 2022, July 10, 2022, October 10, 2022, January 10, 2023, April 10, 2023, July 10, 2023, October 10, 2023, January 10, 2024, and April 10, 2024 Operating Disclosure have been received. All in violation of Section 8-13-1308(G), S.C. Code Ann., 1976, as amended.

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF Richland

Personally appeared before me Meghan Walker Dayson who, first being duly sworn, says that she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of her own knowledge, except for those matters therein based upon information and belief, and as to those she believes them to be true.

[redacted]
Meghan Walker Dayson, Executive Director

Sworn to and subscribed before me this
8th day of July, 2024

[redacted]
Notary Public for South Carolina
My Commission expires 01/22/26

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
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STATE ETHICS COMMISSION
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF C2024-049 State Ethics Commission, Complainant, v. Chesterfield County Republican Party, Respondent.	BEFORE THE STATE ETHICS COMMISSION **MOTION TO DISMISS**

Pursuant to Section 8-13-320(10) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act) and corresponding regulations S.C. Code Regs. 52-703(C) and 52-706(C), the undersigned counsel hereby seeks an Order from the Commission dismissing the above-captioned complaint. This motion is based on the following:

1. In 2010, a federal district court declared the Ethics Act's definition of "committee" unconstitutional.[1] See South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708 (D.S.C. 2010).[2] (Attachment A). Due to the Krawcheck decision, the Commission

[1] Pursuant to Section 8-13-1300(6), "committee" means "an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes: (a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or committee, or a combination of them; or (b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate. 'Committee' includes party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election."

[2] In Krawcheck, the court found that the definition of "committee" was facially overbroad and therefore violative of the First Amendment because it imposed numerous burdens on individuals and entities without reference to the person or entity's major purpose. Citing Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659 (1976), the Krawcheck court stated that the entire aim of "*the* major purpose test" was to ensure that each person or entity "subjected to the burdens of political committee designation were engaged primarily in regulable, election-related speech" and that by "regulating entities that have the opposition or support of political candidates as merely *a* major purpose," there is a risk of burdening a substantial amount of constitutionally protected political speech. Krawcheck, 759 F. Supp. 2d at 716.

ceased enforcement of Section 8-13-1308 with regard to committees and political parties.[3]

Section 8-13-1308 provides, in relevant part:

> (A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee . . . must file an initial certified campaign report within ten days of these initial receipts or expenditures . . .
>
> (B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter . . .
>
> . . .
>
> (D) (1) At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the period ending twenty days before the election . . .
>
> (2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within the calendar quarter in which the election is conducted or twenty days before the election, whichever period of time is greater, in excess of: (a) ten thousand dollars in the case of a candidate for statewide office; or (b) two thousand dollars in the case of a candidate for any other office
>
> . . .
>
> (G) *Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political*

[3] "Political party" is defined in Section 8-13-1300(26) as "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization."

> *party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.* (emphasis added).

2. On December 4, 2015, Commission staff distributed a memorandum titled "Notice to All Political Party-Operating State, City, and County" (Attachment B), which read, in relevant part:

> In accordance with the state statutes all political parties are required to file a Campaign Disclosure report disclosing any funds received or spent from their operating account. These reports are required to be filed electronically with the State Ethics Commission . . . This change is mandatory and failure to file the required form(s) electronically will result in a minimum late filing penalty of $100.00. There will be no late filing penalty for failure to file previous reports.

3. On August 1, 2018, Commission staff sought an opinion from the South Carolina Attorney General's Office (SCAG) regarding the legality of enforcing Section 8-13-1308(G):

> As you may know, in [Krawcheck], the Act's definition of "committee" was declared unconstitutionally overbroad due to its impact on groups engaged primarily in issue advocacy. Citing North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274 (4th Cir. 2008), the court held that the Act's filing and reporting requirements would only be permissible when applied to organizations whose major purpose is the election or opposition of a candidate for elective office.
>
> Following these decisions, the Commission suspended enforcement of a multitude of statutes related to "committees," including, but not limited to, S.C. Code Ann. § 8-13-1308, which requires certain disclosure reports to be filed with the Commission. Similarly, out of an abundance of caution, the Commission suspended enforcement of § 8-13-1308 with regard to political parties' campaign accounts. As indicated by the attached 2015 memorandum, the Commission continued to enforce § 8-13-1308 with regard to political parties' operating accounts. However, given that "political party" is separately defined within the Act and is specifically referenced in § 8-13-1308(G), the Commission now seeks guidance as to whether Krawcheck in fact limits the Commission's ability to enforce the Act's disclosure and filing requirements of political parties'

operating and campaign accounts.

> Therefore, the Commission's question is as follows: Does Krawcheck limit the Commission's ability to enforce the S.C. Code Ann. § 8-13-1308 with regard to a political party, as that term is defined in the Act? (internal footnotes omitted). (Attachment C).

4. On June 4, 2019, the SCAG issued an opinion (Attachment D). As to operating accounts, the SCAG summarily stated, "[a]s we understand it, a party's 'operating account' is designed to pay for the party's day to day operations, such as electricity, salaries, etc. as well as other expenses. In our view, no constitutional issue is raised by requiring a political party to disclose contributions to its operating account." The remaining twenty (20) pages of the SCAG opinion focused on the constitutionality of enforcing Section 8-13-1308 with regard to a political party's campaign account.
5. On December 9, 2024, the Commission filed the instant complaint against Respondent for failing to file quarterly operating disclosures in violation of Section 8-13-1308(G). (Attachment E).
6. The Commission subsequently found probable cause to charge Respondent with violating Section 8-13-1308(G) for failing to file seventeen (17) quarterly operating disclosures. No Notice of Hearing was issued in light of C2022-144: State Ethics Commission v. South Carolina Republican Party, wherein the South Carolina Republican Party was seeking clarification from the SCAG as to its 2019 opinion. (Attachment F).
7. On April 16, 2025, Solicitor General Robert Cook with the SCAG replied to the South Carolina Republican Party's request for clarification, in relevant part, as follows: "I am not sure what our role would be. Our opinion speaks for itself. We cannot mediate with or for the Ethics Commission. I hope you understand that our opinions are advisory only

concerning questions of law."

8. On October 13, 2025, State House Representative Brandon Newton submitted a separate request to the SCAG (Attachment G) seeking clarification on the 2019 opinion stating, in relevant part:

> Because the question presented for your 2019 Opinion did not require it, the 2019 Opinion did not address 1) whether the Ethics Commission may require a report limited to operating expenses when § 8-13-1308(G) requires a single "certified campaign report," or 2) whether § 8-13-1308(G) is enforceable at all when you and the Ethics Commission agreed that § 8-13-1308 was likely constitutionally suspect and unenforceable. Accordingly, it is still an open question whether § 8-13-1308(G), which requires only a single "certified campaign report," permits the Ethics Commission to require a report for only operating expenses when you have opined that § 8-13-1308(G) is likely unconstitutional and best left unenforced.
>
> In light of your 2019 Opinion and the position of the Ethics Commission with respect to campaign reports (not required) and operating reports (required) for political parties, and in light of the requirement in § 8-13-1308(G) for a single "certified campaign report" combining campaign and operating expenses, I seek your opinion on the following question:
>
> May the Ethics Commission require a political party to file an operating expense report when § 8-13-1308(G) requires a single "certified campaign report" combining campaign and operating expenses and § 8-13-1308(G) is unconstitutional?

9. On October 12, 2026, SCAG issued an opinion to Representative Newton (Attachment H), which provided, in relevant part:

> The problem raised by the [SCAG] 2019 opinion is not the opinion's conclusion, but the brief comment therein that the Ethics Commission may continue to enforce § 8-13-1308(G) with respect to a political party's operating account . . . Our bare statement in the 2019 opinion was that such provision "raises no constitutional issue" . . . As has been correctly pointed out to us, this statement was made with no analysis, and was far from the opinion's central conclusion . . . having considered the issue, we conclude that

> disclosure of a political party's operating account raises many of the same constitutional questions discussed at length in our 2019 opinion and runs the same constitutional risks without clarification from the General Assembly. In other words, it is impossible, based upon the current language of § 8-13-1308(G), to separate constitutional uses of a political party's operating account from unconstitutional ones.
>
> . . .
>
> [I]t is easy to envision that a party may, in some instances, employ its operating account or operating expenses for issue advocacy purposes as well as for the election of candidates. Not only is an operating account used to "keep the lights on" and paying staff, but the party might easily prepare flyers or leaflets in support of or opposition of a particular piece of legislation its members might support or oppose, paid wholly from its operating account . . . clearly, a political party's operating account may be used to support issue advocacy, as well as the more routine costs and expenditures. As one court has stated, 'the court cannot separate constitutional applications to save a portion of the statute.' . . .
>
> Thus, while our 2019 opinion suggested that no constitutional issue was raised by a political party's being required to report its operating account, such a suggestion was a mistake and we today revoke it . . . Unless and until the General Assembly – not the Ethics Commission—clarifies this situation, and finds a way to separate what is constitutional activity from issue advocacy even in a political party's operating account, we suggest that § 8-13-1308(G) not be enforced at all.

10. Based on the recent opinion issued by SCAG which finds that enforcing Section 8-13-1308(G) with regard to a political party's operating disclosures is likely unconstitutional, Commission staff seeks dismissal of the above-captioned Complaint.

Respectfully submitted,

[redacted]

Courtney M. Laster (Bar No. 77807)
S.C. State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina, 29210

November 10, 2026
Columbia, South Carolina

Attachment A

759 F.Supp.2d 708
United States District Court, D. South Carolina, Florence Division.

SOUTH CAROLINA CITIZENS FOR LIFE, INC., Plaintiff,

v.

Kenneth C. KRAWCHECK, Marvin D. Infinger, Edward E. Duryea, Johnnie M. Walters, Robert A. Bruce, Priscilla L. Tanner, Susan P. McWilliams, all in their official capacities as commissioners of the South Carolina Ethics Commission, Defendants.

Civil Action No. 4:06–cv–2773–TLW
|
Sept. 13, 2010.

Synopsis

Background: Nonprofit corporation established to present information to the public on abortion, euthanasia, and related issues and to advocate a pro-life position on those issues brought suit challenging the constitutionality of two provisions of South Carolina Ethics Act. The District Court, Terry L. Wooten, J., dismissed, and the corporation appealed. The United States Court of Appeals, Ellis, Senior District Judge for the Eastern District of Virginia, sitting by designation, 301 Fed.Appx. 218, reversed and remanded. On remand, cross-motions for summary judgment were filed.

The District Court, Terry L. Wooten, J., held that phrase "committee" as defined by Act was facially unconstitutional for overbreadth.

Plaintiffs' motion granted; Defendants' motion denied.

Procedural Posture(s): Motion for Summary Judgment.

West Codenotes

Held Unconstitutional
S.C.Code 1976, § 8–13–1300(6)

Attorneys and Law Firms

*709 James Bopp, Jr., Jeffrey P. Gallant, Bopp Coleston and Bostrom, Terre Haute, IN, Kevin A. Hall, Matthew Todd Carroll, Hall and Bowers, Columbia, SC, for Plaintiff.

Christian Stegmaier, Joel Wyman Collins, Jr., Robert Fredrick Goings, Collins and Lacy, Columbia, SC, for Defendants.

ORDER

TERRY L. WOOTEN, District Judge.

South Carolina Citizens for Life, Inc. ("plaintiff") filed this civil action for declaratory and injunctive relief against Kenneth C. Krawcheck, Marvin D. Infinger, Edward E. Duryea, Johnnie M. Walters, Robert A. Bruce, Priscilla L. Tanner, and Susan P.

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McWilliams ("defendants"), all in their official capacities as commissioners of the South Carolina Ethics Commission, *710 challenging the constitutionality of South Carolina law. The plaintiff filed a motion for summary judgment on September 8, 2009. (Doc. # 108). The defendants filed a response to this motion on October 2, 2009. (Doc. # 118). The plaintiff filed a reply on October 20, 2009. (Doc. # 123). The defendants also filed a cross-motion for summary judgment on October 2, 2009, to which the defendants filed a response on October 27, 2009. (Docs. # 117, # 124). The defendants filed a supplemental memorandum on May 10, 2010, to which the plaintiff replied on May 11, 2010. (Docs. # 129, # 130). This Court held a hearing on the parties' motions on May 13, 2010. The plaintiff filed a supplemental memorandum on September 13, 2010. (Doc. # 133). The Court has carefully considered the motions, memoranda, and arguments of the parties. This matter is now ready for disposition.

FACTS

The plaintiff South Carolina Citizens for Life, Inc. is a non-profit membership corporation that is incorporated in the State of South Carolina. (Am. Compl.). South Carolina Citizens for Life, Inc. is the state affiliate of the National Right to Life Committee. (Am. Compl., Ex C). The corporate office is located in Columbia, South Carolina, and the plaintiff has a local chapter that meets in Florence County, South Carolina. (Am. Compl.). According to the plaintiff's bylaws, the primary purpose of the corporation is to "gather and disseminate factual information on the human life issues of fetal development, abortion and abortion alternatives, infanticide and euthanasia by developing and maintaining educational programs." (Am. Compl., Ex B). The plaintiff notes that one means it uses to advance its pro-life mission is to educate the public about the positions of candidates for public office on pro-life issues. (Am. Compl.). The record indicates that the plaintiff's organization also maintains an educational fund as well as separately funded state and federal internal political action committees, or PACs. (Am. Compl., Ex C).

In 1991, South Carolina enacted the Ethics Act to allow state officials to monitor and oversee the state election process. The South Carolina Ethics Commission is an agency of the State of South Carolina responsible for the enforcement of the Ethics Act. The mission of the Ethics Commission is to carry out the General Assembly's mandate to maintain public trust by ensuring compliance with the state's laws on financial disclosure; lobbyist/lobbyist's principal disclosure and campaign disclosure; regulating lobbyists and lobby organizations; issuing advisory opinions interpreting the statute; educating public officeholders and the public on the requirements of the state's ethics laws; and prosecuting violators either administratively or criminally. State Ethics Commission, *Mission Statement,* http://ethics.sc. gov/aboutus/Commission/Agency+Mission.htm. The statutes pertaining to the Commission and its governance, powers, and responsibilities are found at Title 8, Chapter 13 of the 1976 Code of Laws. The General Assembly has assigned numerous responsibilities to the Commission. *See* S.C.Code Ann. § 8–13–320. Of particular importance to this case, the Commission has the authority to determine whether a person has failed to comply with the disclosure requirements contained in the Ethics Act, S.C.Code Ann. § 8–13–320(7); to request that the attorney general initiate a civil or criminal action for the purposes of enforcing the Ethics Act, S.C.Code Ann. § 8–13–320(9); to receive and investigate complaints for failure to file statements required by the Ethics Act, S.C.Code Ann. § 8–13–320(9); and to recommend disciplinary action for violations of the Ethics Act, S.C.Code Ann. § 8–13–320(10).

*711 The plaintiff alleges that it planned to distribute a direct mail "voter guide" in advance of the November 7, 2006 general election for District 79 of the South Carolina House of Representatives. The voter guide was to be compiled based on responses to a Candidate Survey forwarded to the candidates by the plaintiff.[1] The proposed voter guides would provide the candidates' political affiliation, as well as their positions on various pro-life issues. The plaintiff alleges that it planned to spend approximately $15,000 to create and distribute the voter guides for the 2006 House District 79 general election. The plaintiff also alleges that it intends to distribute materially similar voter guides before future elections that will fall under the statutes challenged in this case.[2]

On September 22, 2006, SCCL requested an informal and formal advisory opinion from the defendants concerning the legality of the voter guides. (Am. Compl., Ex. E). On September 29, 2006, the defendants responded to the request by declining to render an informal opinion. (Am. Compl., Ex. F). Under South Carolina law, the Ethics Commission is not required to issue an

informal advisory opinion.[3] In its response, the Commission stated that it could not render an informal advisory opinion because the issues raised were never previously addressed by the Commission. (Am. Compl., Ex. F). The Commission added that "since the constitutionality of § 8–13–1300(31)(c) is currently in litigation,[4] it is the staff's opinion that this matter should be resolved by a formal opinion of the full Commission," and noted that "[t]he next meeting of the Commission is scheduled for November 15, 2006." (Am. Compl., Ex. F). The defendants inquired as to whether SCCL wanted this issue placed on the agenda for the next meeting. (Am. Compl., Ex. F). Following this communication, SCCL filed the instant action on October 4, 2006.

In this action, the plaintiff challenges the constitutionality of two provisions of the South Carolina Ethics Act. More specifically, the plaintiff alleges (1) the term "committee" found in S.C.Code Ann. § 8–13–1300(6) is facially unconstitutional for overbreadth; (2) the term "influence" *712 found in S.C.Code Ann. § 8–13–1300(31)(c) is facially unconstitutional for overbreadth; and (3) the term "influence" found in S.C.Code Ann. § 8–13–1300(31)(c) is facially unconstitutional for vagueness. In its briefing, the plaintiff has further alleged that these specific provisions are unconstitutional as-applied to the plaintiff's organization.

SUMMARY JUDGMENT STANDARD

Pursuant to Federal Rule of Civil Procedure 56(c), the defendants are entitled to summary judgment if the pleadings, responses to discovery, and the record reveal that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). As the party seeking summary judgment, the moving party bears the initial responsibility of informing this Court of the basis for its motion. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). This requires that the moving party identify those portions of the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of genuine issues of material fact. *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548; *see also Anderson*, 477 U.S. at 249, 106 S.Ct. 2505.

Though the moving party bears this initial responsibility, the nonmoving party must then produce "specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2); *see Celotex*, 477 U.S. at 317, 106 S.Ct. 2548. In satisfying this burden, the nonmoving party must offer more than a mere "scintilla of evidence" that a genuine issue of material fact exists, *Anderson*, 477 U.S. at 252, 106 S.Ct. 2505, or that there is "some metaphysical doubt" as to material facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Rather, the nonmoving party must produce evidence on which a jury could reasonably find in its favor. *See Anderson*, 477 U.S. at 252, 106 S.Ct. 2505.

In analyzing a motion for summary judgment, this Court construes all facts and reasonable inferences in the light most favorable to the nonmoving party. *See Miltier v. Beorn*, 896 F.2d 848 (4th Cir.1990). Summary judgment is proper "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there [being] no genuine issue for trial." *Matsushita*, 475 U.S. at 587, 106 S.Ct. 1348 (1986) (internal quotations omitted).

I. Overbreadth Challenge to South Carolina's Definition of "Committee."

In its first ground for relief, the plaintiff asserts that the phrase "committee" as defined by the South Carolina Ethics Act is facially unconstitutional for overbreadth. The South Carolina Ethics Act provides:

> "*Committee*" means an association, a club, an organization, or a group of persons which, **to influence the outcome of an elective office,** receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:

(a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or

(b) independent expenditures aggregating five hundred dollars or more during *713 an election cycle for the election or defeat of a candidate.

"Committee" includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

S.C.Code Ann. § 8–13–1300(6) (emphasis added).

The Ethics Act further defines the phrase "influence the outcome of an elective office" by providing:

"Influence the outcome of an elective office" means:

(a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to "vote for", "elect", "cast your ballot for", "Smith for Governor", "vote against", "defeat", or "reject";

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as "Smith's the One", "Jones 2000", "Smith/Jones", "Jones!", or "Smith–A man for the People!"; or

(c) **any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate.** For purposes of this paragraph, "communication" means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. "Communication" does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

S.C.Code Ann. § 8–13–1300(31) (emphasis added).

Designation as a "committee" under the South Carolina Ethics Act involves a number of organizational, administrative, reporting, and funding requirements. For example, any group that qualifies as a "committee" under the Act is required to: (1) maintain records of contributions, contributors, and expenditures, S.C.Code Ann. § 8–13–1302; (2) file a statement of organization, S.C.Code Ann. §§ 8–13–1304, 1306; (3) file various certified campaign reports, S.C.Code Ann. § 8–13–1308; (4) comply with bank account requirements, S.C.Code Ann. § 8–13–1312; (5) comply with a $3,500 contribution limit, S.C.Code. Ann. § 8–13–1322[5]; (6) reject anonymous contributions, S.C.Code Ann. § 8–13–1324; (7) comply with prohibitions on certain expenditures or contributions, § 8–13–1332; (8) solicit contributions in places other than on capitol grounds and capitol office complexes, *714 S.C.Code § 8–13–1336; (9) comply with the prohibition on personal use of campaign funds, S.C.Code Ann. § 8–13–1348; (10) comply with dissolution requirements, S.C.Code Ann. § 8–13–1368; (11) provide self-identification in election-related communications, S.C.Code Ann. § 8–13–1354; (12) disclose information required by contribution and expenditure reporting forms, S.C.Code Ann. § 8–13–1360; (13) file a statement of inactivity when necessary, S.C.Code Ann. § 8–13–1362; (14) comply with requirements concerning use of surplus funds, S.C.Code Ann. § 8–13–1370; and (15) risk criminal or civil penalties for non-compliance, S.C.Code §§ 8–13–1510, 1520.

Both the federal and state governments have a long history of disclosure requirements in the election context. The earliest federal disclosure law was enacted on June 25, 1910, just over one hundred years prior to the controversy now before this Court. However, the analysis of the South Carolina provisions challenged in this action begins, "as does nearly any analysis of the constitutionality of campaign finance regulation," *North Carolina Right to Life Inc. v. Leake,* 525 F.3d 274, 281 (4th Cir.2008), with the Supreme Court's landmark decision in *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) ("*Buckley* "). In *Buckley,* the Supreme Court addressed several challenges to the Federal Election Campaign Act of 1971 ("FECA"). FECA

contained numerous restrictions including limits on campaign contributions by individuals, limits on expenditures by individuals and groups that were made "relative to a clearly identified candidate," and public disclosure requirements for contributions and expenditures above certain threshold levels. *Buckley,* 424 U.S. at 7, 96 S.Ct. 612. In deciding *Buckley,* the Court "recognized that legislatures have the well established power to regulate elections, ... and that pursuant to that power, they may establish standards that govern the financing of political campaigns." *North Carolina Right to Life Inc. v. Leake,* 525 F.3d 274, 281 (4th Cir.2008) ("*Leake* ") (citing *Buckley,* 424 U.S. at 13, 26, 96 S.Ct. 612). The Supreme Court "simultaneously noted, however, that campaign finance restrictions 'operate in an area of the most fundamental First Amendment activities,' and thus threaten to limit ordinary 'political expression.' " *Id.* (quoting *Buckley,* 424 U.S. at 14, 96 S.Ct. 612).

Based on these competing concerns, the Supreme Court "recognized the need to cabin legislative authority over elections in a manner that sufficiently safeguards vital First Amendment Freedoms." *Leake* at 281. The Court "did so by demarcating a boundary between regulable election-related activity and constitutionally protected political speech." *Id.* In addressing the comprehensive disclosure provisions set forth in FECA, the Supreme Court held that "campaign finance laws may constitutionally regulate only those actions that are 'unambiguously related to the campaign of a particular ... candidate.' " *Id.* (quoting *Buckley,* 424 U.S. at 80, 96 S.Ct. 612). As the Fourth Circuit noted, this holding is based on the recognition that "only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable." *Id.*

The "unambiguously campaign related" standard was of particular significance in determining the scope of regulations directed at political committees. As evidenced by the South Carolina Ethics Act, "designation as a political committee often entails a significant regulatory burden." *Leake* at 274. The Supreme Court noted that expenditures by political committees could "be assumed to fall within the core area sought to be addressed by Congress," ***715** because the expenditures of these groups were, "by definition, campaign related." *Buckley,* 424 U.S. at 79, 96 S.Ct. 612. *See Leake* at 287 ("*Buckley* applied this same 'unambiguously campaign related' requirement when analyzing the permissible scope of political committee regulation"); *National Right to Work Legal Defense and Education Foundation v. Herbert,* 581 F.Supp.2d 1132, 1153 (D.Utah 2008) ("*Buckley* applied the same unambiguously campaign related standard to the permissible scope of political committee regulation"). FECA broadly defined "political committee" as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000." 2 U.S.C. § 431(d) (1970 ed., Supp. IV). The Supreme Court recognized that the definition could be "interpreted to reach groups engaged purely in issue discussion." *Buckley,* 424 U.S. at 79, 96 S.Ct. 612. To prevent the regulations from reaching groups engaged primarily in issue advocacy, the Supreme Court concluded that the definition of political committee "need only encompass organizations that are under the control of a candidate or ***the major purpose of which is the nomination or election of a candidate.***" *Buckley,* 424 U.S. at 80, 96 S.Ct. 612 (emphasis added). This construction of the term "political committee" as applied to non-candidate organizations has come to be known as the "major purpose" test. *Colorado Right to Life Committee, Inc. v. Coffman,* 498 F.3d 1137, 1152 (10th Cir.2007) (citing *FEC v. Akins,* 524 U.S. 11, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998)).

The Fourth Circuit examined the major purpose test as it relates to state political committee designations in detail in *North Carolina Right to Life v. Leake,* 525 F.3d 274, 286 (4th Cir.2008). In *Leake,* the plaintiff North Carolina Right to Life, Inc. contended that the North Carolina definition of "political committee" was unconstitutionally overbroad and vague for failure to incorporate the major purpose test. The North Carolina statute at issue defined political committee as:

> a combination of two or more individuals ... that makes or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:
>
> a. Is controlled by a candidate;
>
> b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to § 163–278.19(b); or

d. **Has a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.**

N.C. Gen.Stat. § 163–278.6(14), amended by N.C. Sess. Laws 2007–391 (emphasis added).

More specifically, the plaintiffs contended that the North Carolina definition of political committee was unconstitutional because it attempted to regulate entities that had only "a major purpose" of supporting or opposing a candidate rather than entities that had "*the* major purpose" of supporting or opposing a candidate. *Id.* at 287 (emphasis in original).

The Fourth Circuit held that "in light of *Buckley's* goals, it is clear that the importance the plaintiffs attach to the definite article is correct," and that "*Buckley's* articulation of the permissible scope of political committee regulation is best understood as an empirical judgment as to whether an organization primarily engages ***716** in regulable, election-related speech." *Id.* Therefore, the Fourth Circuit noted that "the Court in *Buckley* must have been using '*the* major purpose' test to identify organizations that had the election or opposition of a candidate as their only or primary goal—this ensured that the burdens facing a political committee largely fell on election-related speech, rather than on protected political speech." *Id.* (citing *Buckley,* 424 U.S. at 79, 96 S.Ct. 612) (emphasis in original). The Fourth Circuit went on to note that "[i]f organizations were regulable merely for having the support or opposition of a candidate as 'a major purpose,' political committee burdens could fall on organizations primarily engaged in speech on political issues unrelated to a particular candidate." *Id.* at 287–88. The Fourth Circuit concluded that "[t]his would not only contravene both the spirit and the letter of *Buckley's* 'unambiguously campaign related' test, but it would also subject a large quantity of ordinary political speech to regulation." *Id.*

In striking the North Carolina definition of committee as unconstitutional, the Fourth Circuit noted that "[p]ermitting the regulation of organizations as political committees when the goal of influencing elections is merely one of multiple 'major purposes' threatens the regulation of too much ordinary political speech to be constitutional." *Id.* at 288–89. The Court stated that "the entire aim of *Buckley's* 'the major purpose' test was to ensure that all entities subjected to the burdens of political committee designation were engaged primarily in regulable, election-related speech," and that "[b]y diluting *Buckley's* test and regulating entities that have the opposition or support of political candidates as merely 'a major purpose,' North Carolina runs the risk of burdening a substantial amount of constitutionally protected political speech." *Id.* at 289. The Fourth Circuit concluded that "[a] single organization can have multiple 'major purposes,' and imposing political committee burdens on a multi-faceted organization may mean that North Carolina is regulating a relatively large amount of constitutionally protected speech unrelated to elections merely to regulate a relatively small amount of election-related speech." *Id.* This Court finds that the *Leake* analysis dictates the decision in this case.

The record indicates that the South Carolina definition of committee contains constitutional infirmities similar to those addressed by the Fourth Circuit in *Leake.* While the State of North Carolina attempted to incorporate a form of *Buckley's* major purpose test into its definition of political committee, the South Carolina Ethics Act creates committee restrictions without any reference to an entity's major purpose. The South Carolina Ethics Act provides that committee restrictions apply to any group that makes an expenditure in excess of five hundred dollars on "any communication, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate." S.C.Code Ann. §§ 8–13–1300(6), 1300(31)(c). Thus, an entity that spends several million dollars annually on issue advocacy or community outreach can be required to register as a committee under South Carolina law if the group decides to spend five hundred and one dollars on a campaign related communication. Without the incorporation of the "major purpose" test into the statute, this result is inconsistent with both *Buckley* and *Leake.*

Other Courts analyzing similar definitions of committee have reached the same result. In *Colo. Right to Life Comm. Inc. v. Coffman,* 498 F.3d 1137 (10th Cir.2007), the Tenth Circuit Court of Appeals considered an as-applied challenge to the Colorado ***717** definition of political committee. The Colorado Constitution defined a "political committee" as "any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or

expenditures in excess of $200 to support or oppose the nomination or election of one or more candidates." *Id.* at 1152 (citing Colorado Const. art. XXVII, § 2(12)(a)). The Tenth Circuit noted that under the state definition of political committee, "any group that spends more than $200 a year to support or oppose the nomination or election of one or more candidates is subject to the State's various administrative, organizational, and reporting requirements." *Id.* at 1153. In concluding that the statute was unconstitutional, the district court below held that the two hundred dollar trigger, standing alone, was incompatible with the major purpose test, and that the "amount of money an organization must accept or spend—$200—is not substantial and would, as a matter of common sense, operate to encompass a variety of entities based on an expenditure that is insubstantial in relation to their overall budgets." *Id.* (quoting *Colo. Right to Life Comm. v. Davidson,* 395 F.Supp.2d 1001, 1021 (D.Colo.2005)). The district court added that under the state definition, "an entity that spends $200,000 on various non-political activities and donates $200 (1/10 of 1% of its budget) to a candidate is deemed a political committee." *Id.* The Tenth Circuit affirmed the district court, noting "that the $200 trigger, standing alone, cannot serve as a proxy for the 'major purpose' test as applied" to the plaintiff in the case. *Id.* at 1154.

The Tenth Circuit recently affirmed the New Mexico District Court's determination that the New Mexico definition of political committee contained similar constitutional infirmities in the case of *New Mexico Youth Organized v. Herrera,* 611 F.3d 669 (10th Cir.2010). The New Mexico definition provided that a political committee must be "operated primarily for a political purpose," but expanded the definition to include, by default, any organization that spends over $ 500 in one year on a political ad campaign. *Id.* at 673 (quoting NMSA § 1–19–26(L)). The district court below noted that "[a]lthough the use of 'primarily for a political purpose' tracks *Buckley's* 'major purpose' language, the statute completely subverts that test by classifying an electioneering expenditure greater than $ 500 as irrefutably constituting the organization's primary purpose, regardless of what percentage of operating funds the expenditure constituted or what else the organization spent its resources on." *New Mexico Youth Organized v. Herrera,* 2009 U.S. Dist. LEXIS 125104 (D.N.M.2009) at *44–45. The district court further noted that "[b]y defining spending over $500 on an election-related ad as sufficient to subject an organization to the full panoply of regulations otherwise reserved solely for organizations whose primary purpose is to advocate for or against candidates, the statute renders the 'major purpose' test completely superfluous." *Id.*

The district court went on to examine the annual budgets of the two plaintiff organizations in the case, and noted that under the New Mexico law "these organizations would be classified as 'political committees' if they spent as little as 2/10 of one percent and 5/100 of one percent of their budgets ... on electioneering communications." *Id.* at *46. The district court noted, "the state has the authority to regulate contributions and expenditures supporting express advocacy or its functional equivalent, but the state is without the authority to compel an organization to register as a political committee on the basis of such expenditures alone if the organization's major purpose is not the nomination or election of a candidate." **718 *Id.* at *47. The district court concluded that the New Mexico statute contained "no middle ground that incorporates disclosure requirements governing only electioneering communications," but that, "[i]nstead, by requiring those organizations that make even minor expenditures on electioneering communications to register as political committees, the [New Mexico] Campaign Reporting Act, as applied to Plaintiffs, impermissibly 'regulate[s] a relatively large amount of constitutionally protected speech unrelated to elections merely to regulate a relatively small amount of election-related speech.' " *Id.* at *49–50 (quoting *Leake,* 525 F.3d 274, 289 (4th Cir.2008)). The Tenth Circuit affirmed the district court's grant of summary judgment, concluding that the New Mexico statute was unconstitutional as applied to the two plaintiff organizations. *Herrera,* 611 F.3d at 679.

In *Nat'l Right to Work Legal Defense and Educ. Found. v. Herbert,* 581 F.Supp.2d 1132 (D.Utah 2008), the Utah District Court examined the constitutionality of the Utah definition of "political issues committee." Utah defined a political issues committee as "an entity, or any group of individuals or entities within or outside this state, that solicits or receives donations from any other person, group, or entity or makes disbursements to influence, or to intend to influence, directly or indirectly, any person to ... assist in placing a ballot proposition on the ballot ..." *Id.* at 1152 (quoting Utah Code Ann. § 20A–11–101(28)). The Court noted that being "designated a political issues committee in Utah imposes substantial burdens on organizations," including requirements that the committee "file a statement of registration, disclosing all of the organization's officers, board members, and any other entities or corporations the organization affiliates with or represents." *Id.* The political issues committees were also required to "file periodic and continuous financial statements, which detail the organization's contributors and the amount

contributed." *Id.* The court noted that the "burdensome disclosure requirements may provide a disincentive for many individuals and entities to engage in activities that might classify them as a member of a political issue committee," and that "otherwise protected political speech, such as true issue advocacy, may be self-censored as individuals and entities attempt to avoid a political issues committee designation." *Id.* at 1152–1153.

The court concluded that "Utah's attempt to regulate entities making *any* ... disbursements cannot be saved." *Id.* at 1153 (emphasis in original). The court held that "[w]ith such a broad definition, Utah does not even attempt to comply with *Buckley's* 'major purpose' requirement, and has pushed the reach of political committee regulation beyond constitutional limits." *Id.* The court, therefore, held that the state definition was unconstitutional on its face. *Id.*

Like the regulations in the above cited cases, the South Carolina Ethics Act imposes numerous burdens on entities that qualify as committees under S.C.Code Ann. § 8–13–1300(6) without reference to the entity's major purpose. As previously stated, the Ethics Act imposes approximately fifteen burdens of varying degree. These burdens include requirements that each committee file recurring certified campaign reports; maintain records of contributions, contributors, and expenditures; comply with various bank account requirements; reject anonymous and cash contributions; and disclose information about contributions and expenditures. The Ethics Act also includes a provision that prevents a committee from accepting more than $3,500 annually in contributions from any individual donor. ***719** S.C.Code Ann. § 8–13–1322. The Ethics Committee has limited the reach of this provision in recent Advisory Opinions, determining that any funds donated for the purpose of allowing a committee to distribute communications pursuant to 8–13–1300(31)(c) which promote or supports a candidate or attacks or opposes a candidate within forty-five days of any election—such as voter guides—do not qualify as "contributions." *House Legislative Ethics Committee Opinion* 2006–3, (Doc. # 16). Because these funds do not qualify as "contributions" under the Ethics Act, funds donated for this purpose would not be subject to the $3,500 limit on contributions. *House Legislative Ethics Committee Opinion* 2006–3, (Doc. # 16). Funds used for this purpose are also not subject to the disclosure requirements applicable to funds which qualify as "contributions" under the Ethics Act. *State Ethics Commission Advisory Opinion* AO2006–004, (Doc. # 16). However, these subsequent limitations on the contribution limits set forth at Section 8–13–1322 do not eliminate the threat that the contribution limits will suppress a committee's ability to speak. As a whole, the provisions of the Ethics Act place significant burdens on groups that qualify as committees without meaningful consideration of the group's major purpose, thereby threatening to chill significant First Amendment rights.

As the Fourth Circuit highlighted in *Leake,* state legislatures may further goals of allowing transparency and preventing corruption in the election process without placing extensive committee burdens on all groups that engage in election-related speech. In addressing North Carolina's previous statutory scheme, the Fourth Circuit recognized that "North Carolina is surely right to think that organizations—particularly large organizations—can have a substantial impact on the electoral process even if influencing elections is merely one of their many 'major purposes.' " *Leake* at 290. However, the Fourth Circuit added that "[w]hen faced with such organizations, however, North Carolina does not have to impose the substantial burdens of political committee designation to achieve its goal of preventing corruption." *Id.* The Fourth Circuit noted that "[i]nstead, North Carolina could impose one-time reporting requirements—as it already does on certain individual expenditures and contributions by non-political committee organizations." *Id.* The Fourth Circuit concluded that "[i]n doing so, North Carolina would produce the same benefits of transparency and accountability while only imposing regulatory burdens on communications that are 'unambiguously campaign related.' " *Id.* (citing *Buckley,* 424 U.S. at 80, 96 S.Ct. 612).

Indeed, federal law provides for one-time disclosures similar to those alluded to by the Fourth Circuit in *Leake.* Federal election provisions require that every person that makes a disbursement in excess of $10,000 for the direct costs of producing and airing an electioneering communication shall file a one-time report disclosing the identification and principal place of business of the person making the disbursement, and the names of individuals contributing $1,000 or more towards the cost of the disbursement. 2 U.S.C. § 434(f). The Supreme Court recently cited these provisions with favor in *Citizens United v. Federal Election Commission,* 558 U.S. 310, 130 S.Ct. 876, 913–917, 175 L.Ed.2d 753 (2010), rejecting an as-applied challenge to the application of these provisions. In addressing South Carolina's current statutory scheme at the hearing on this matter, counsel for the plaintiff summarized:

> [t]he fact that they don't have one time reports is simply their problem. They should have adopted a statute like federal law that requires a one time report. And they can't substitute now, well, we don't have one time reports, so therefore, we can make everybody become a ***720** P.A.C. [political action committee]. No. That's unconstitutional, and if this Court strikes that down, then they can adopt a constitutional statute that requires the one time report.
>
> Summ. J. Tr. at p. 68:5–12.

This Court concludes that the committee provisions of the South Carolina Ethics Act at issue simply sweep too far. The committee definition set forth at S.C.Code Ann. § 8–13–1300(6) is in direct conflict with the Fourth Circuit's decision in *Leake*, and therefore requires invalidation by this Court.

Further, the Fourth Circuit's analysis with regard to political committee designations in *Leake* has not been called into question by any subsequent Supreme Court decision. The Supreme Court's 2007 decision in *WRTL*, cited repeatedly by the Fourth Circuit in *Leake*, did not reach the issue of political committee designation now before this Court. Similarly, the issue of the major purpose test as it relates to political committee designation was not addressed in the recent decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). While the Supreme Court did have occasion to note the burdensome nature of the federal political action committee regulations in *Citizens United*, the Court did not squarely address the requirements for imposing committee status on organizations. *Id.* at 897. Thus, the Fourth Circuit's analysis on the issue of the major purpose test in *Leake* has not been altered by a subsequent decision, and this Court is, therefore, bound by the Fourth Circuit's analysis in that case.

As a final matter, the Court does not conclude that it would be appropriate to apply a limiting construction to S.C.Code Ann. § 8–13–1300(6). As the Supreme Court has noted, "[i]t has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be 'readily susceptible' to a narrowing construction that would make it constitutional, it would be upheld." *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 397, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988) (citing *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975)). However, the Court added that the "key to application of this principle is that the statute must be 'readily susceptible' to the limitation; we will not rewrite a state law to conform it to constitutional requirements." *Id.* Though the defendants suggest that the challenged provision is susceptible to a limiting construction, no such construction has been presented to the Court. The Court finds that limiting the application of S.C.Code. Ann. § 8–13–1300(6) only to groups that have the major purpose of influencing the outcome of an election would be tantamount to rewriting the state statute. This is particularly true in this instance, where the "committee" definition invalidated herein is a component of a comprehensive legislative scheme that involves detailed regulations governing all entities that are encompassed by the statutory definition. The revision of the statutory scheme is a task best-suited to the state legislature, and the Court concludes that application of a limiting construction is not appropriate in this case.

For the reasons set forth herein, the plaintiff's motion for summary judgment on its first ground for relief is hereby **GRANTED,** (Doc. # 108), and the Court hereby concludes that the definition of "committee" located at S.C.Code Ann. § 8–13–1300(6) is facially invalid on the ground that the definition is unconstitutionally overbroad.

II. Overbreadth Challenge to South Carolina's Definition of "Influence."

The plaintiff's second cause of action is that the South Carolina definition of "influence ***721** the outcome of an elective office" is unconstitutionally overbroad. As noted above, "influence the outcome of an elective office" is a phrase incorporated within the South Carolina definition of committee. The phrase serves as one of multiple triggers that can place "committee" status on an entity. The phrase is separately defined within the Ethics Act. The specific definition provides that:

> ***"Influence the outcome of an elective office"*** means:
>
> (a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to "vote for", "elect", "cast your ballot for", "Smith for Governor", "vote against", "defeat", or "reject";

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as "Smith's the One", "Jones 2000", "Smith/Jones", "Jones!", or "Smith–A man for the People!"; or

(c) **any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate.** For purposes of this paragraph, "communication" means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. "Communication" does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

S.C.Code Ann. § 8–13–1300(31) (emphasis added).

The Court has already determined that the South Carolina definition of committee, a definition that incorporates the phrase "influence the outcome of an elective office," is unconstitutional under the analysis set forth by the Fourth Circuit in *Leake*. Therefore, the plaintiff's second cause of action is no longer viable. However, the Court will briefly address the merits of the plaintiff's overbreadth challenge to this phrase.

Much like the preceding analysis, an examination of the constitutionality of the phrase "influence the outcome of an elective office" begins with the Supreme Court's analysis in *Buckley*. As set forth above, *Buckley* established the proposition that campaign finance legislation should only attempt to regulate activities or spending that is "unambiguously related to the campaign of a particular ... candidate." *Buckley*, 424 U.S. at 80, 96 S.Ct. 612. In addition to examining the scope and implications of "political committee" designations, the Court in *Buckley* also analyzed the extent to which FECA could permissibly regulate various campaign-related communications.

Along these lines, the Supreme Court addressed the constitutionality of two specific FECA provisions at issue in *Buckley*. The first provision placed a $1,000 limitation on independent expenditures "relative to a clearly identified candidate." *Buckley*, 424 U.S. at 44, 96 S.Ct. 612 (citing 18 U.S.C. § 608(e)(1)). The second provision imposed disclosure requirements on every person making "political contributions or expenditures" in excess of $ 100 per year. *Id.* at 74–75, 96 S.Ct. 612 (citing 2 U.S.C. § 434(e)). FECA further defined both "contributions" and "expenditures" in parallel ***722** provisions as donations of money or other assets "for the purpose of ... influencing the nomination ... or election" of a candidate for federal office. *Id.* at 76, 96 S.Ct. 612 (quoting 2 U.S.C. § 431(e), (f)).

In addressing the $1,000 limitation on independent expenditures, the Court held that the reach of the provision would require limitation to avoid invalidation on vagueness grounds. The Court held that the $1,000 limit on independent expenditures "must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." *Id.* The Court noted that such a construction would restrict the application of the statute to "communications containing express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' reject." *Id.* at 44 n. 52, 96 S.Ct. 612.

In addressing the "contribution" and "expenditure" provisions set forth at 2 U.S.C. § 431(e) and (f), the Court also held that limiting constructions were required to allow these provisions to meet constitutional scrutiny. The Court concluded that regulable "contributions" were limited to donations made directly or indirectly to a candidate, political party, or a campaign committee, those contributions made to other organizations that are specifically earmarked for political purposes, and expenditures made in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate. *Id.* at 78, 96 S.Ct. 612. The Court construed "expenditures" in the same manner that it construed "independent expenditures" in 18 U.S.C. § 608(e), as reaching "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.* at 80, 96 S.Ct. 612. The Court concluded by noting that this "reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate." *Id.*

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Thus, the Supreme Court held in *Buckley* that legislatures may regulate "communications that in express terms advocate the election or defeat of a clearly identified candidate for" public office. *Id.* at 44, 96 S.Ct. 612. The Court went on to delineate specific words that exemplify this "express advocacy" such as, " 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.' " *Id.* As the Fourth Circuit summarized, "*Buckley* thus stands for the proposition that legislatures may constitutionally regulate communications that use the obviously campaign-related 'magic words of express advocacy.' " *Leake* at 282 (citing *Fed. Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 495, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (Scalia, J., dissenting)). The Fourth Circuit added that "[f]ocusing regulation in this way ensures that campaign finance restrictions do not sweep so broadly as to restrict ordinary political speech." *Id.*

In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA) which contained a series of amendments to FECA. The Supreme Court noted that as a result of the Court's "strict reading" of various FECA provisions in *Buckley*, "the use or omission of 'magic words' such as 'Elect John Smith' or 'Vote Against Jane Doe' marked a bright statutory line separating 'express advocacy' from 'issue advocacy.' " *McConnell v. Federal Election Comm.*, 540 U.S. 93, 126, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). In the years following *Buckley*, the Supreme Court recognized that "[w]hile the distinction between 'issue' and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects," and that both forms "were used ***723** to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of magic words." *Id.* The Court noted that "[l]ittle difference existed, for example, between an ad that urged viewers to 'vote against Jane Doe' and one that condemned Jane Doe's record on a particular issue before exhorting viewers to 'call Jane Doe and tell her what you think.' " *Id.* at 127, 96 S.Ct. 612. The Court concluded that "*Buckley's* express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption," and that, in response, "Congress enacted BCRA to correct the flaws it found in the existing system." *Id.* at 93–94, 96 S.Ct. 612.

One way in which Congress attempted to correct these perceived flaws was through the creation of the term "electioneering communications." This term was "intended to replace the narrowing construction of FECA's disclosure provisions adopted by [the] Court in *Buckley*," and the newly defined term was not limited to communications that expressly advocated the election or defeat of particular candidates. *Id.* at 189, 96 S.Ct. 612. Instead, "electioneering communication" was defined broadly as any "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal Office" and is made within "60 days before a general, special or runoff election" or "30 days before a primary or preference election." *Id.* (citing 2 U.S.C. § 434(f)(3)(A)(i)).

In *McConnell v. Federal Election Comm.*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) ("*McConnell* "), the Court addressed numerous challenges to the recently enacted BCRA legislation, including a facial challenge to the new definition of "electioneering communication." The plaintiffs argued that the definition was overly broad because it did not limit the BCRA's application to communications that constituted "express advocacy" under the Court's holding in *Buckley*. The Court rejected this facial challenge, concluding that there was no overbreadth concern with the BCRA's definition of "electioneering communication" to the extent that the regulable speech in question was the "functional equivalent" of express advocacy. *Id.* at 204–206, 96 S.Ct. 612. However, as the Supreme Court later clarified, the *McConnell* Court "did not explain that it was adopting a particular test for determining what constituted the 'functional equivalent of express advocacy.' " *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 466, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) ("*WRTL* ").

In *WRTL*, the Court considered an as-applied challenge to the BRCA's definition of electioneering communication. In considering the appropriate test to apply in determining what constituted the "functional equivalent of express advocacy," the Court held that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as ***an appeal to vote for or against a specific candidate.*** " *WRTL*, 551 U.S. at 469–70, 127 S.Ct. 2652 (emphasis added). The Court concluded by noting that "[d]iscussion of issues cannot be suppressed simply because the issues may also be pertinent in an election," and that "[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor." *Id.* at 474, 127 S.Ct. 2652.

The Fourth Circuit provided a concise summary of the above line of cases in *Leake*. The Fourth Circuit noted that, "[t]o date, the Court has only recognized two categories of activity that fit within *Buckley's* unambiguously campaign related standard." *Leake* at 281. The Fourth Circuit highlighted that, "[f]irst, legislatures ***724** may regulate 'communications that in express terms advocate the election or defeat of a clearly identified candidate for' public office." *Id.* (citing *Buckley*, 424 U.S. at 44, 96 S.Ct. 612). The Fourth Circuit went on to note that "[s]econd, the Supreme Court has recently held that legislatures have a very limited authority to regulate campaign communications that are 'the functional equivalent of express advocacy.' " *Id.* at 282 (citing *McConnell*, 540 U.S. at 206, 124 S.Ct. 619). The Supreme Court in *McConnell* stated that "strict adherence to *Buckley's* approach could render the legislative power to regulate elections 'functionally meaningless,' " and that "[t]he Court thus defined a category of activity—beyond the 'magic words' identified in *Buckley*—to be regulable as the 'functional equivalent of express advocacy.' " *Id.* (citing *McConnell*, 540 U.S. at 193, 124 S.Ct. 619). However, as the Fourth Circuit recognized, "[i]n order to protect political expression ... the Court has narrowly circumscribed this category, because any attempt to identify communications as election-related without focusing on words that explicitly label them as such threatens to infringe on protected First Amendment liberties." *Id.*

In light of these concerns, the Fourth Circuit observed that "to be considered the 'functional equivalent of express advocacy,' a communication must meet two separate requirements." *Id.* The first requirement is that "the communication must qualify as an 'electioneering communication,' defined by the [BCRA] as a 'broadcast, cable, or satellite communication' that refers to a 'clearly identified candidate' within sixty days of a general election or thirty days of a primary election." *Id.* (citing *WRTL*, 551 U.S. at 474 n. 7, 127 S.Ct. 2652). Second, "a communication can be deemed the 'functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.' " *Id.* (citing *WRTL*, 551 U.S. at 469–70, 127 S.Ct. 2652). The Fourth Circuit added that "[t]he purpose of this requirement is to avoid chilling political expression by forcing a speaker to have to defend his communication from regulation." *Id.*

The Supreme Court revisited its prior holding in *McConnell* in the recent case of *Citizens United v. Federal Election Commission*, 558U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) ("*Citizens United*"). Directly at issue in *Citizens United* was the BRCA provision that prohibited corporations and unions from using general treasury funds to make independent expenditures for electioneering communications. 2 U.S.C. § 441(b). Prior to the enactment of the BRCA, federal law prohibited corporations and unions from "using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections." *Id.* at 887 (citing 2 U.S.C. 441(b) (2000 ed.)). The BRCA amended § 441(b) to prohibit corporations and unions from using general treasury funds for making any electioneering communication as well. *Id.* The Supreme Court addressed these corporate limits, and invalidated 2 U.S.C. § 441(b)'s restrictions on corporate independent expenditures. *Id.* at 913. In so doing, the Court noted that it was "required to overrule the part of *McConnell* that upheld BCRA § 203's extension of § 441b's restrictions on corporate independent expenditures." *Id.*

The Supreme Court also addressed the disclaimer and disclosure requirements contained in the BCRA. The BCRA disclaimer requirements provide that televised electioneering communications must include a disclaimer identifying the party ***725** responsible for the content of the advertising. 2 U.S.C. § 441(d)(2). The BCRA disclosure requirements provide that any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC that identifies the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. 2 U.S.C. §§ 434(f)(1), (2). The Court noted that "[d]isclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' " and " 'do not prevent anyone from speaking.' " *Id.* at 914 (citing *Buckley*, 424 U.S. at 64, 96 S.Ct. 612, *McConnell*, 540 U.S. at 201, 124 S.Ct. 619). The Court added that it has "subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* (citing *Buckley*, 424 U.S. at 64, 66, 96 S.Ct. 612, *McConnell*, 540 U.S. at 231–232, 124 S.Ct. 619).

The Court first upheld the disclaimer provisions, noting that the disclaimers required under the BCRA " 'provid[e] the electorate with information,' ... 'insure that the voters are fully informed' about the person who is speaking," and "[a]t the very least, ...

avoid confusion by making clear that the ads are not funded by a candidate or political party." *Id.* at 915 (citing *McConnell*, 540 U.S. at 196, 124 S.Ct. 619, *Buckley*, 424 U.S. at 76, 96, 96 S.Ct. 612). The Supreme Court then addressed the disclosure requirements, noting that "disclosure is a less restrictive alternative to more comprehensive regulations of speech." *Id.* The Court delineated three justifications for its ruling. First, the Court noted that "[i]n *Buckley*, the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures." *Id.* (citing *Buckley*, 424 U.S. at 75–76, 96 S.Ct. 612). Second, the Court noted that "[i]n *McConnell*, three justices who would have found § 441(b) to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements." *Id.* (citing *McConnell*, 540 U.S. at 231, 124 S.Ct. 619 (opinion of Kennedy, J., joined by Rehnquist, C.J., and Scalia, J.)). Third, the Court noted that it "has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself." *Id.* (citing *United States v. Harriss*, 347 U.S. 612, 625, 74 S.Ct. 808, 98 L.Ed. 989 (1954)). The Supreme Court concluded that, "[f]or these reasons, we reject Citizen United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy." *Id.*

The plaintiffs in the case before this Court assert an overbreadth challenge to subsection (c) of South Carolina's definition of "influence the outcome of an elective office." This section provides that "influence the outcome of an elective office" means "any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate." S.C.Code Ann. § 8–13–1300(31). The plaintiffs appear to concede that subsections (a) and (b) of the definition encompass "express advocacy" that may be subjected to regulation under the cases cited above. The plaintiffs contend, however, that subsection (c) is unconstitutionally overbroad. As previously stated, the challenged "influence the outcome" phrase is specifically incorporated into the South Carolina Ethics Act's definition of committee set forth at S.C.Code Ann. § 8–13–1300(6). Because the definition of committee found at 8–13–1300(6) has been invalidated ***726** by this Court's ruling herein, as set forth in Section I above, the plaintiff's challenge to § 8–13–1300(31) does not form a basis for the ruling in this case.

As a practical matter, however, it appears that subsection (c) of the definition of "influence the outcome of an elective office" is South Carolina's attempt to define activities that constitute the "functional equivalent" of express advocacy. Thus, through this definition, the state attempts to define the types of election-related communications that may be subject to some form of state regulation. Prior to the decision in *Citizens United*, the Fourth Circuit provided guidance to state legislatures attempting to define the scope of permissible regulation in *Leake*. The Court first noted that to be subject to regulation, a "communication must qualify as an 'electioneering communication,' defined by the [BCRA] as a 'broadcast, cable, or satellite communication' that refers to a 'clearly identified candidate' within sixty days of a general election or thirty days of a primary election." *Id.* (citing *WRTL*, 551 U.S. at 479 n. 7, 127 S.Ct. 2652). It appears that South Carolina's attempt to define the forms of regulable election-related communications is broader than the BCRA definition in some respects. While the BCRA definition of electioneering communications includes broadcast, cable, and satellite communications, South Carolina law provides that regulable communications include television and radio advertisements as well as communications made through telephone bank, direct mail, electronic mail, and any paid advertisements conveyed through an unenumerated medium that cost more than five thousand dollars. S.C.Code Ann. § 8–13–1300(c)(i)-(iii). Also, the BCRA imposes restrictions on electioneering communications that occur within 60 days before a general election and 30 days before a primary election. The South Carolina definition of "influence" includes communications made 45 days before an election without reference to whether the election is a general or a primary election, thereby extending the window during which communications prior to a primary election may be subjected to regulation.

Further, the BCRA requires that a regulable communication refer to a ***"clearly identified*** candidate." 2 U.S.C. § 434(f) (emphasis added). The South Carolina definition of influence the outcome of an elective office includes "any communication made, not more than forty-five days before an election, which promotes or supports ***a candidate*** or attacks or opposes ***a candidate,*** regardless of whether the communication expressly advocates a vote for or against a candidate." S.C.Code Ann. § 8–13–1300(31) (emphasis added). The plaintiffs contend that the absence of the "clearly identified" language renders the South Carolina standard significantly more broad than the standard set forth within the BCRA. The plaintiffs further argue that the

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absence of this phrase allows South Carolina to regulate communications that make no mention of any candidate at all, but merely include general or contextual references to a particular candidate.

The second requirement set forth in *Leake* was that "a communication can be deemed the 'functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.' " *Id.* (citing *WRTL* at 469–70). Despite the fact that the South Carolina definition is more broad in scope than the federal definition of electioneering communication, it appears to the Court that South Carolina's "influence" definition, which includes "any communication ... which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate" *727 may very well meet the "appeal to vote" requirement originally articulated by the Supreme Court in *WRTL*.

Importantly, the Supreme Court drew a distinction between restrictions on independent expenditures and the imposition of disclosure requirements in the recent case of *Citizens United*. In *Citizens United*, the Supreme Court held that legislatures may, in certain instances, permissibly impose disclosure requirements on election-related communications even though the communications do not qualify as the functional equivalent of express advocacy. The Court noted that disclosure requirements are subject to "exacting scrutiny" which "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United* at 914 (quoting *Buckley*, 424 U.S. at 64, 66, 96 S.Ct. 612). However, the Court rejected the plaintiff's contention that the federal disclosure requirements, like the federal limitations on independent expenditures addressed by the Court in *WRTL*, must be limited to express advocacy or its functional equivalent. *Id.* at 915.

South Carolina's definition of "influence the outcome of an elective office" does reach communication channels, including direct mail and e-mail, that the federal government has previously chosen not to regulate. However, the Supreme Court's recent ruling in *Citizen's United* indicates that South Carolina may be constitutionally permitted to require some level of disclosure on organizations based on the dissemination of a communication that "promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate" pursuant to § 8–13–1300(31). As detailed above, South Carolina cannot constitutionally impose committee restrictions on any group that distributes a communication that qualifies under 8–13–1300(31)(c) without regard for the group's major purpose. Further, any disclosure requirements imposed by the state based on a qualifying Section 8–13–1300(c) communication must satisfy the burden of exacting scrutiny. However, based on the Supreme Court's recent ruling in *Citizen's United*, the Court is not prepared to conclude that South Carolina would be unable to impose some level of disclosure requirement on groups that disseminate communications which qualify under Section 8–13–1300(31)(c). The Court concludes that South Carolina's attempt to define the scope of communications that may be susceptible to some level of regulation does not contain an inherent constitutional infirmity.

III. Vagueness Challenge to South Carolina's Definition of "Influence."

In its final ground for relief, the plaintiff has asserted that South Carolina's definition of "influence the outcome of an elective office," addressed in Section II above, is unconstitutionally vague. The plaintiff specifically argues that the standard of "promotes or supports a candidate or attacks or opposes a candidate" located within Section 8–13–1300(31)(c) is unconstitutionally vague because the standard lacks clear standards that a person of ordinary intelligence would be able to understand, and because the standard has the potential to reach a substantial amount of constitutionally protected speech. Like the overbreadth challenge to this phrase discussed above, the plaintiff's third cause of action is no longer viable in light of the Court's ruling in Section I above. Again, however, the Court will briefly address the plaintiff's challenge.

The Fourth Circuit has noted that "[a] statute can be impermissibly vague for *728 either of two independent reasons." *United Seniors Ass'n, Inc. v. Social Security Administration*, 423 F.3d 397, 408 (4th Cir.2005) (quoting *Hill v. Colorado*, 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000)). The first reason that a statute will be considered unconstitutionally vague is if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Id.* The second situation occurs when a statute "authorizes or even encourages arbitrary and discriminatory enforcement." *Id.*

The Supreme Court recently addressed a vagueness challenge to similar language in *McConnell.* In *McConnell,* the Court addressed a challenge to the definition of "Federal election activity" by a political party which included "a public communication that refers to a clearly identified candidate for Federal office ... and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)." 2 U.S.C. § 431(20)(A)(iii) (parenthesis in original). In rejecting the vagueness challenge, the Supreme Court noted that "[t]he words 'promote,' 'oppose,' 'attack,' and 'support' clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision." *McConnell,* 540 U.S. at 170 n. 64, 124 S.Ct. 619. The Court added that "[t]hese words 'provide explicit standards for those who apply them' and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.' " *Id.* (citing *Grayned v. City of Rockford,* 408 U.S. 104, 108–109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). The language addressed by the Supreme Court in *McConnell* was arguably narrower, in that it defined the scope of activity taken by a political party, a group whose activities are "presumed to be in connection with election campaigns." *Id.* (citing *Buckley,* 424 U.S. at 79, 96 S.Ct. 612). However, the Court does not find that the distinction controls in this case. As a practical matter, the challenged language neither fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct is encompassed, nor authorizes or encourages arbitrary and discriminatory enforcement of the Ethics Act. For this reason, the Court does not conclude that the language challenged by the plaintiff is unconstitutionally vague.

CONCLUSION

For the reasons set forth herein, the defendants' motion for summary judgment is hereby **DENIED.** (Doc. # 117). The plaintiff's motion for summary judgment is **GRANTED** as to the plaintiff's first cause of action, (Doc. # 108), and the Court hereby concludes that the definition of "committee" located at S.C.Code Ann. § 8–13–1300(6) is facially invalid on the ground that the definition is unconstitutionally overbroad.

IT IS SO ORDERED.

All Citations

759 F.Supp.2d 708

Footnotes

1 If the candidate did not respond to the survey, the record indicates that the plaintiff would also look to outside surveys for information on the candidate's views, such as the "Project Vote Smart Survey," where available. (Am. Compl., Ex. D) (sample voter guide).

2 Even though SCCL's intended communications were pointed towards a past election, mootness does not bar this case. It is reasonable to conclude, based on the record before the Court that this case falls within an exception to the rules on mootness as one that is capable of repetition yet evades review because of the length of time required for the courts to resolve the matter. *Virginia Society For Human Life, Inc. v. Federal Election Commission,* 263 F.3d 379, 390 n. 3 (4th Cir.2001) *citing DeFunis v. Odegaard,* 416 U.S. 312, 318–19, 94 S.Ct. 1704, 40 L.Ed.2d 164(1974). Furthermore, SCCL has alleged that it intends to distribute voter guides in future elections.

3 S.C. Code of Regs. 52–301 to 303 set forth the procedures by which the Commission is to render these advisory opinions. These mandates provide that any person to whom the Act could reasonably be expected to apply can request an advisory opinion upon written request. The Code of Regulations delineates between informal advisory opinions and formal advisory opinions. The Commission will only provide an informal advisory opinion, "if appropriate." S.C.Code Reg. 52–302. However, a "formal advisory opinion shall be considered by the Commission at a public meeting," and the person requesting that opinion "may appear at the meeting." S.C.Code Reg. 52–303. This procedure has been in effect since 1997. S.C.Code Regs. 52–301–303 (2009).

4 *See South Carolinians for Responsible Government v. Krawcheck, et al.,* 3:06–cv–01640–MJP, filed in the United States District Court for the District of South Carolina, Columbia Division, on May 30, 2006.

5 Subsequent Ethics Commission Advisory Opinions limit the reach of the $3,500 contribution limitation by noting that funds contributed to a committee for the purpose of creating a Section 8–13–1300(31)(c) communication, such as a voter guide, is not considered a "contribution" for purposes of the Ethics Act. Thus, the $3,500 contribution limit does not apply to contributions made to a committee solely for the purpose of creating a Section 8–13–1300(31)(c) communication. *House Legislative Ethics Committee Opinion* 2006–3, (Doc. # 16). Because funds contributed for the purpose of distributing a Section 8–13–1300(31)(c) communication do not qualify as a contribution, the funds are also subject to disclosure requirements under the Ethics Act. *State Ethics Commission Advisory Opinion* AO2006–004, (Doc. # 16).

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Attachment B

NOTICE TO ALL POLITICAL PARTY-OPERATING STATE, CITY AND COUNTY

December 4, 2015

In accordance with the state statutes all political parties are required to file a Campaign Disclosure report disclosing any funds received or spent from their operating account. These reports are required to be filed electronically with the State Ethics Commission.
Section: 8-13-1308 "(G) Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee."

In order to file the operating disclosure report you must first create a user account online. To create a user account please go to our website https://ethics.sc.gov, click on electronic filing, click on create a new user account and follow the instructions. If you have already created an operating account please go to our website, click on electronic filing, login to your account and complete your report.

The **January 10th quarterly** is the next report that is due by **January 10, 2016.** The reporting period for this report is **October 1–December 31, 2015**. This change is mandatory and failure to file the required form(s) electronically will result in a minimum late filing penalty of $100.00. There will be **no late filing penalty** for failure to file previous reports. Please provide this information to your local city and county parties. Please contact our office if you have any questions.

Sincerely

Herbert R. Hayden, Jr.
Executive Director

Attachment C

State of South Carolina
State Ethics Commission

BRIAN M. BARNWELL, CHAIR
VICTOR K. LI, VICE CHAIR
DONALD GIST
SAMUEL L. ERWIN

DON JACKSON
BRANDOLYN THOMAS PINKSTON
CHILDS CANTEY THRASHER
ASHLEIGH R. WILSON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

August 1, 2018

The Honorable Alan Wilson
Attorney General
State of South Carolina
P.O. Box 11549
Columbia, South Carolina 29211

Dear Attorney General Wilson:

Please allow this correspondence to serve as a request for an opinion as to the constitutionality of enforcing certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Act) with regard to political parties, as that term is defined in the Act.

As you may know, in South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708 (D.S.C. 2010), the Act's definition of "committee"[1] was declared unconstitutionally overbroad due to its impact on groups engaged primarily in issue advocacy. Citing North Carolina Right to Life, Inc. v. Leak, 525 F.3d 274 (4th Cir. 2008), the court held that the Act's filing and reporting

[1] Section 8-13-1300(6) of the Act defines "committee" as:

> . . . an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes: (a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or (b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.
>
> "Committee" includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

requirements would only be permissible when applied to organizations whose major purpose is the election or opposition of a candidate for elective office.

Following these decisions, the Commission suspended enforcement of a multitude of statutes related to "committees," including, but not limited to, S.C. Code Ann. § 8-13-1308, which requires certain disclosure reports to be filed with the Commission. Similarly, out of an abundance of caution, the Commission suspended enforcement of § 8-13-1308 with regard to political parties' campaign accounts. As indicated by the attached 2015 memorandum, the Commission continued to enforce § 8-13-1308 with regard to political parties' operating accounts.[2] However, given that "political party" is separately defined within the Act and is specifically referenced in § 8-13-1308(G),[3] the Commission now seeks guidance as to whether Krawcheck in fact limits the Commission's ability to enforce the Act's disclosure and filing requirements of political parties' operating and campaign accounts.

Therefore, the Commission's question is as follows: Does Krawcheck limit the Commission's ability to enforce the S.C. Code Ann. § 8-13-1308 with regard to a political party, as that term is defined in the Act?

As always, we appreciate the response your office provides to this request in advance. With kind regards, I am

Sincerely,

[redacted]

Meghan Walker
Executive Director

Attachment

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[2] Indeed, the Act distinguishes, and the Commission has recognized, differences between contributions to a political party's campaign account and donations to a political party's operating account. See SEC AO92-240.

[3] "Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, 'anything of value' includes contributions received which may be used for the payment of operation expenses of a political party, a legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee."

Attachment D

ALAN WILSON
ATTORNEY GENERAL

June 4, 2019

Ms. Meghan L. Walker, Executive Director
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

Dear Ms. Walker:

You have requested an opinion "as to the constitutionality of enforcing certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Act) with regard to political parties, as that term is defined in the Act." By way of background, you provide the following information:

> [a]s you may know, in South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp.2d 708 (D.S.C. 2010), the Act's definition of "committee". . . was declared unconstitutionally overbroad due to its impact on groups engaged primarily in issue advocacy. Citing North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274 (4th Cir. 2008), the court held that the Act's filing and reporting requirements would only be permissible when applied to organizations whose major purpose is the election or opposition of a candidate for elective office.
>
> Following these decisions, the Commission suspended enforcement of a multitude of statutes related to "committees," including, but not limited to, S.C. Code Ann. § 8-13-1308, which requires certain disclosure reports to be filed with the Commission. Similarly, out of an abundance of caution, the Commission suspended enforcement of § 8-13-1308 with regard to political parties' campaign accounts. As indicated by the attached 2015 memorandum, the Commission continued to enforce § 8-13-1308 with regard to political parties' operating accounts. . . . However, given that "political party" is separately defined within the Act and is specifically referenced in § 8-13-1308(G),. . . the Commission now seeks guidance as to whether Krawcheck in fact limits the Commission's ability to enforce the Act's disclosure and filing requirements of political parties' operating and campaign accounts.
>
> Therefore, the Commission's question is as follows: Does Krawcheck limit the Commission's ability to enforce the S.C. Code Ann. § 8-13-1308 with regard to a political party, as that term is defined in the Act?

(emphasis added). You further note that "the Act distinguishes, and the Commission has recognized, differences between contributions to a political party's campaign account and donations to a political party's operating account." (citing SECAO 92-240). In the referenced opinion of the State Ethics Commission, it was concluded that "transfers of funds from a national party committee to a State party are not subject to the restrictions contained in Section 8-13-

1322(A). Subsection (A) of § 8-13-1322 provides that "(A) A person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year" pursuant to § 8-13-1300(6) a "committee" includes a "party committee."

Your question is difficult with no clear answer, particularly in light of Krawcheck and N.C. Right to Life v. Leake, 535 F.3d 274 (4th Cir. 2008). While disclosure "statutes connected to the nomination or election of a candidate for public office" are "almost without exception upheld," statutes which encompass issue advocacy are far more constitutionally problematical. Malloy, "A New Transparency: How To Ensure Disclosure From 'Mixed-Purpose' Groups After Citizens United," 45 U.S.F.L. Rev. 428, 440 (2011). Here, a political party, although generally thought of as an entity which supports the nomination ore election of its candidates, does much more. A party also engages in issue advocacy. Thus, the answer to your question is unclear. Accordingly, we believe it is best to err on the side of caution, by continuing the Commission's present policy of non-enforcement of § 8-13-1308, and await clarification by the General Assembly.

Law/Analysis

Your question involves provisions contained in the "Ethics, Government Accountability and Campaign Reform Act" of 1991 ("the Act"), codified at S.C. Code Ann. § 8-13-100 et seq. As our Supreme Court has advised, "[t]he Ethics Act is a comprehensive statutory scheme for regulating the behavior of elected officials, public employees, lobbyists, and other individuals who present for public service." Ex Parte Harrell v. Attorney General of State, 409 S.C. 60, 64, 760 S.E.2d 808, 810 (2014). Section 8-13-1308(G) of the Act provides as follows:

> [n]otwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee or a party committee. A political party also must comply with the reporting requirements of subsections (E), (C) and (F) of Section 8-13-1308 in the same manner as a candidate or committee.

(emphasis added). In particular, Subsection (F) requires a detailed campaign report, including the "name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution. . . ." [§ 8-13-1308(F)(2)]. Section 8-13-1300(26) of the Act defines a "political party" as an "association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization."

. Typically, any statute enacted by the General Assembly is entitled to a strong presumption of constitutionality. As we have consistently advised,

> . . . legislation passed by the General Assembly is presumed constitutional. Horry County School Dist. v. Horry County, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid."). A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the Constitution." Joytime Distrib. & Amusement Co. Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). Moreover, "[w]hile this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional." Op. S.C. Att'y Gen., August 19, 1997.

Notwithstanding this presumption of validity ordinarily afforded to legislation, we note that many courts do not afford the presumption of constitutionality if First Amendment rights are arguably infringed. As one court has observed, "[t]he general presumption of constitutionality accorded legislation is inapplicable where the law infringes on the exercise of First Amendment rights, and the burden of establishing the law's constitutionality is upon the government." Schultz v. City of Cumberland, 536 N.W.2d 192, 194 (Wisc. App. 1995). Op. S.C. Att'y Gen., 2007 WL 4284626 (November 27, 2007).

Moreover, while this Office has concluded that the Ethics Commission possesses no authority to determine the constitutionality of a statute, see Op. S.C. Att'y Gen., 2010 WL 3896168 (September 3, 2010), we have also steadfastly adhered to the requirement that the Commission possesses the sole jurisdiction to enforce the Act administratively. As we previously advised, "[t]his Office has consistently recognized the Commission's exclusive jurisdiction regarding any resolution of questions involving interpretation and administrative enforcement of the State Ethics Act." Op. S.C. Att'y Gen., 2013 WL 6924890 (December 23, 2013). Thus, while we may advise as to the constitutional implications of a provision of the Ethics Act, the decision to enforce or not enforce any provision lies with the Commission. As we have advised previously:

> [g]enerally, a public officer may not decline to enforce laws found on the statute books until the courts have declared such enactments unconstitutional . . . [citations omitted]. However, a governmental officer who takes an oath to uphold the United States Constitution may act on the ruling of the Attorney General as to the doubtful constitutionality of a particular statute if the courts have not acted. . . . This is consistent with the federal case law that would permit a governmental official to be held personally liable in a suit for money damages if he violates a person's clearly established constitutional rights. See Harlow v. Fitzgerald, 73 L.Ed.2d 396 [and other cases]. . . .
>
> A court may deem such rights to be clearly established based upon the above analysis. This provides further authority for you, as well as any other South Carolina public official to decline to enforce the state statute. O'Shields v. Caldwell, [207 S.C. 194, 219, 35 S.E.2d 184, 194 (1945)].

Op. S.C. Att'y Gen., 2003 WL 21790884 at *4 (June 24, 2003).

With that brief background in mind, we turn to a discussion of the Krawcheck decision by the District Court of South Carolina in 2010.

Krawcheck Decision

The Krawcheck decision is a seminal authority in this matter regarding enforcement of the Ethics Act. In Krawcheck, supra, South Carolina Citizens for Life, Inc. brought suit against the members of the State Ethics Commission, contending that "the term 'committee' found in [the Ethics Act], S.C. Code Ann. § 8-13-1300(6), is facially unconstitutional for overbreadth, (2) the term 'influence' found in S.C. Code Ann. § 8-13-1300(31)(C) is facially unconstitutional for overbreadth and (3) the term 'influence' found in S.C. Code Ann. § 8-13-1300(31)(C) is facially unconstitutional for vagueness." The Court ultimately ruled that the definition "committee," as found in the Act, is facially unconstitutional as a result of overbreadth.

The Krawcheck Court noted, that "[d]esignation as a 'committee' under the South Carolina Ethics Act involves a number of organizational, administrative, reporting and funding requirements." 759 F.Supp.2d at 713-14 (detailing regulatory requirements). Proceeding to discuss the governing First Amendment decisional law in the context of election regulation, Judge Wooten stated:

> [b]oth the federal and state governments have a long history of disclosure requirements in the election context. The earliest federal disclosure law was enacted on June 25, 1910, just over one hundred years prior to the controversy now before this Court. However, the analysis of the South Carolina provisions challenged in this action begins, "as does nearly any analysis of the constitutionality of campaign finance regulation," North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274, 281 (4th Cir. 2008), with the Supreme Court's landmark decision in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) ("Buckley"). In Buckley, the Supreme Court addressed several challenges to the Federal Election Campaign Act of 1971 ("FECA"). FECA contained numerous restrictions including limits on expenditures by individuals and groups that were made "relative to a clearly identified candidate," and public disclosure requirements for contributions by individuals, limits on expenditures by individuals and groups that were made "relative to a clearly identified candidate," and public disclosure requirements for contributions and expenditures above certain threshold levels. Buckley, 424 U.S. at 7, 96 S.Ct. 612. In deciding Buckley, the Court "recognized that legislatures have the well established power to regulate elections . . . and that pursuant to that power, they may establish standards that govern the financing of political campaigns." North Carolina Right to Life, Inc. v. Leake, 525 F.3d 274, 281 (4th Cir. 2008) ("Leake") (citing Buckley, 424 U.S. at 13, 26, 96 S.Ct. at 612).
>
> The Supreme Court "simultaneously noted, however, that campaign finance restrictions operate in the area of the most fundamental First Amendment activities,

> "and thus threaten to limit ordinary 'political expression.'" Id. (quoting Buckley, 424 U.S. at 14, 96 S.Ct. 612).
>
> Based on these competing concerns, the Supreme Court "recognized the need to cabin legislative authority over elections in a manner that sufficiently safeguards vital First Amendment Freedoms." Leake at 281. The Court "did so by demarcating a boundary between regulable election-related activities and constitutional protected political speech." Id. In addressing the comprehensive provisions set forth in FECA, the Supreme Court held that "campaign finance laws may constitutionally regulate only those actions that are 'unambiguously related to the campaign of a particular candidate.'" Id. (quoting Buckley, 424 U.S. at 80, 96 S.Ct. 612). As the Fourth Circuit noted, this holding is based on the recognition that "only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable."

759 F.Supp.2d at 714-15.

The District Court's concern in Krawcheck was that the definition of "political committee" in FECA "could be 'interpreted to reach groups engaged purely in issue discussion.'" Id. at 715 (quoting Buckley, 424 U.S. at 79). Thus, according to Krawcheck,

> [t]o prevent the regulations from reaching groups engaged primarily in issue advocacy, the Supreme Court concluded that the definition of political committee "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley, 424 U.S. at 80, 96 S.Ct. 612 (emphasis added). This construction of the term "political committee" as applied to non-candidate organizations has come to be known as the "major purpose" test. Colorado Right to Life Committee, Inc. v. Coffman, 498 F.3d 1137, 1152 (10th Cir. 2007) (citing FEC v. Akins, 524 U.S. 111; 118 S.Ct. 1777, 144 L.Ed.2d 10 (1998).

Id. at 715.

Moreover, in Krawcheck, Judge Wooten further pointed out that the Fourth Circuit had applied the "major purpose" test in Leake. In the view of the Leake Court, it was not sufficient that the statute in question have support of a candidate as one goal, among other purposes:

> [t]he Fourth Circuit went on to note that "[i]f organizations were regulable merely for having the support or opposition of a candidate as 'a major purpose' political committee burdens could fall on organizations primarily engaged in speech on political issues unrelated to a particular candidate." Id. at 287-88. The Fourth Circuit concluded that "[t]his would not only contravene both the spirit and the letter of Buckley's 'unambiguously campaign related' test, but it would also subject a large quantity of ordinary political speech to regulation." Id.

> . . . The Court stated that "the entire aim of Buckley's 'the major purpose' test was to ensure that all entities subjected to the burdens of political committee designation was engaged primarily in regulable, election-related speech" and that "[b]y diluting Buckley's test and regulating entities that have the opposition or support of political candidates as merely 'a major purpose,' North Carolina runs the risk of burdening a substantial amount of constitutionally protected political speech." Id. at 289. The Fourth Circuit concluded that "[a] single organization can have multiple 'major purposes,' and imposing political committee burdens on a multi-faceted organization may mean that North Carolina is regulating a relatively large amount of constitutionally protected speech unrelated to elections merely to regulate a relatively small amount of election-related speech." Id. The Court finds that the Leake analysis dictates the decision in this case.

Id. at 716.

Krawcheck then concluded that "[t]he record indicates that the South Carolina definition of committee contains constitutional infirmities similar to those addressed by the Fourth Circuit in Leake." In the Court's view:

> [t]he South Carolina Ethics Act provides that committee restrictions apply to any group that makes an expenditure in excess of five hundred dollars on "any communication not more than forty-five days before an election, which promotes or supports a candidate, regardless of whether the communication expressly a vote for or against a candidate." South Carolina Code Ann. § 8-13-1300(6), 1300(31)(c). Thus, an entity that spends several million dollars annually on issue advocacy or community outreach can be required to register as a committee under South Carolina law if the group decides to spend five hundred and one dollars on a campaign related communication. Without the incorporation of the "major purpose" test into the statute, this result is inconsistent with both Buckley and Leake.

Id. (emphasis added).

Following a discussion of a number of decisions in other jurisdictions, Judge Wooten concluded that "[l]ike the legislation in the above-cited cases, the South Carolina Ethics Act imposes numerous burdens on entities that qualify as committees under S.C. Code Ann. § 8-13-1302(6) without reference to the entity's major purpose." The Court further observed that there was an exception to the contributions limit of $3500, but even such exception did not sufficiently protect First Amendment interests:

> [t]he Ethics Committee has limited the reach of this provision in recent Advisory Opinions, determining that any funds donated for the purpose of allowing a committee to distribute communications pursuant to § 8-13-1300(31)(c) which promote or supports a candidate or attacks or opposes a candidate within forty-five days of any election – such as voter guides – do not qualify as "contributions." House Legislative Ethics Committee Opinion 2006-3 (Doc. # 16). Because these funds do not qualify as "contributions" under the Ethics Act, funds donated for this

> purpose would not be subject to the $3500 limit on contributions. House Legislative Ethics Committee Opinion 2006-3 (Doc. # 16). Funds used for this purpose are also not subject to the disclosure requirements applicable to funds which qualify as "contributions" under the Ethics Act. State Ethics Commission Advisory Opinion AO 2006-004 (Doc. # 16). However, these subsequent limitations on the contribution limits set forth in Section 8-13-1322 do not eliminate the threat that the contribution limits will suppress a committee's ability to speak. As a whole, the provisions of the Ethics Act place significant burdens on groups that qualify as committees without meaningful consideration of the group's major purpose, thereby threatening to chill significant First Amendment rights.

Id. at 718-19 (emphasis added).

The Court in Krawcheck explained that the Legislature was the authority to produce a constitutional definition of "committee" rather than the judiciary. In the Court's view, "limiting the application of S.C. Code Ann. § 8-13-1300(6) only to groups that have the major purpose of influencing the outcome of the election would be tantamount to rewriting the statute. This is particularly true in this instance, where the 'committee' definition invalidated herein is a component of a comprehensive legislative scheme that involves detailed regulations governing all entities that are encompassed by the statutory definition." Id. at 720. A legislative "fix," however, was possible according to the Court:

> [a]s the Fourth Circuit highlighted in Leake, since state legislatures may further goals of allowing transparency and preventing corruption in the election process without placing extensive committee burdens on all groups that engage in election-related speech. In addressing North Carolina's previous statutory scheme, the Fourth Circuit recognized that "North Carolina is surely right to think that organizations – particularly large organizations – can have a substantial impact on the electoral process even if influencing elections is merely one of their many 'major purposes.' Leake at 290. However, the Fourth Circuit added that "[w]hen faced with such organizations, however, North Carolina does not have to impose the substantial burdens of political committee designation to achieve its goal of preventing corruption." Id. The Fourth Circuit noted that "[i]nstead North Carolina could impose one-time reporting requirements as it already does on certain individual expenditures and contributions by non-political committee organizations." Id. The Fourth Circuit concluded that "[i]n doing so, North Carolina would produce the same benefits of transparency and accountability while only imposing regulatory burdens on communications that are 'unambiguously campaign-related.'" Id. (citing Buckley, 424 U.S. at 80, 96 S.Ct. 612).

Id. at 719 (emphasis added). The Court further explained as to how the legislature might remedy the constitutional flaw in the definition of "committee":

> [i]ndeed, federal law provides for one-time disclosures similar to those alluded to by the Fourth Circuit in Leake. Federal election provisions require that every person that makes a disbursement in excess of $10,000 for the direct costs of providing and

> airing an electioneering communication shall file a one-time report disclosing the identification and principal place of business of the person making the disbursement, and the names of individuals contributing $1,000 or more towards the costs of disbursement. 2 U.S.C. § 434(f). The Supreme Court recently cited these provisions with favor in Citizens United v. Federal Election Commission, 558 U.S. 310, 130 S.Ct. 876, 913-917, 175 L.Ed.2d 753 (2010), rejecting an as-applied challenge to the application of these provisions. In addressing South Carolina's current statutory scheme at the hearing on this matter, counsel for the plaintiff summarized:
>
> > [t]he fact that they don't have one time reports is simply their problem. They should have adopted a statute like federal law that requires a one time report. And they can't substitute now, well, we don't have one time reports, so therefore, we can make everybody become a P.A.C. [political action committee]. No. That's unconstitutional, and if this Court strikes that down, then they can adopt a constitutional statute that requires the one time report. Summ. J. Tr. at p. 68: 5-12.
>
> This Court concludes that the committee provisions of the South Carolina Ethics Act simply sweep too far. The committee definition, set forth at S.C. Code Ann. § 8-13-1300(6) is in direct conflict with the Fourth Circuit's decision in Leake, and therefore requires invalidation by this Court.

Id. at 719-20.

State Ethics Commission Response To Krawcheck

Your letter indicates that as a result of the Krawcheck decision,

> . . . the Commission suspended enforcement of a multitude of statutes related to committees "including, but not limited to, S.C. Code Ann. § 8-13-1308, which requires certain disclosure reports to be filed with the Commission. Similarly, out of an abundance of caution, the Commission suspended enforcement of § 8-13-1308 with regard to political parties' campaign accounts. As indicated by the attached memorandum, the Commission continued to enforce § 8-13-1308 with regard to political parties' operating accounts. . . .

(emphasis added). The Commission, in distinguishing between a political party's campaign account and its operating account, apparently relied upon an earlier opinion, SECA092-340 (November 18, 1992). As we understand it, a party's "operating account" is designed to pay for the party's day to day operations, such as electricity, salaries, etc. as well as other expenses. In our view, no constitutional issue is raised by requiring a political party to disclose contributions to its operating account.

We turn now to § 8-13-1308's regulation of political parties with respect to the party's campaign account. As we have noted in a previous opinion, "[a]lthough this provision (§ 8-13-1308(G)) requires political parties to report contributions, it does not appear to restrict

expenditures made by political parties." Op. S.C. Att'y Gen., 2007 WL 3317618 (October 31, 2007). Thus, the question is whether the First Amendment renders it unconstitutional the limitations on the State's requirement of disclosure through § 8-13-1308 with respect to a political party's campaign account.

It is important to recognize that Krawcheck dealt with the definition of "political committee" and did not address the separate issue of political parties. Nevertheless, we emphasize that political parties possess First Amendment rights of political expression and free speech, just as others do. As Judge Childs explained in Greenville County Repub. Party Exec. Comm. v. South Carolina, 824 F.Supp.2d 655, 663-64 (D.S.C. 2011),

> "The freedom to join together in furtherance of common political beliefs" is clearly protected by the First Amendment of the Constitution. Cal. Democratic Party v. Jones, 530 U.S. 567, 574, 120 S.Ct. 2402, 147 L.E.2d 502 (2000) (citing Tashjan, 479 U.S. at 214-15, 107 S.Ct. 544). Encompassed within the right to freedom of association is the power of an organization to identify the people who constitute the organization, as well as the right to limit the organization to people who share in the common interest and purpose of the organization. Democratic Party of U.S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 122, 101 S.Ct. 1010, 67 L.Ed.2d 82. A corollary of the right to associate is the right not to associate. Jones, 530 U.S. at 574, 120 S.Ct. 2402. Political parties' associational rights are of paramount importance in the process of selecting its candidates for elective office. Indeed, it is the nomination process that "often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in the winning it over to the party's views." Jones 530 U.S. at 575, 120 S.Ct. 2402. Accordingly, courts are careful to observe the protections afforded by the First Amendment to political parties in choosing their standard bearers. Id.

Moreover, in Colorado Republican Federal Campaign Committee v. Fed. Election Comm., 518 U.S. 604 (1996) (Colorado I), the Court held that expenditures by political parties, made independently, without coordination with a particular candidate, are protected by the First Amendment. The Court stated the following:

> [b]eginning with Buckley, the Court's cases have found a "fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." NCPAC, supra at 497, 105 S.Ct. at 1469. This difference has been grounded in the observation that restrictions on contributions impose "only a marginal restriction upon the contributor's ability to engage in free communications." Buckley, supra at 20-21, 96 S.Ct. at 635, because the symbolic communicative value of a contribution bears little relation to its size, 424 U.S at 21, 96 S.Ct. at 635-636, and because such limits leave "persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." Id. at 28, 96 S.Ct. at 639. At

> the same time, reasonable contribution limits directly and materially advance the Government's interest in preventing exchanges of large financial contributions for political favors." Id. at 26-27, 96 S.Ct. at 638-639..
>
> In contrast, the Court has said that restrictions of independent expenditures significantly impair the ability of individuals and groups to engage in direct political advocacy and "represent substantial . . . restraints on the quantity and diversity of political speech." Id., at 19, 96 S.Ct. at 635. And the same time, the Court has concluded that limitations on independent expenditures are less directly related to preventing corruption, since "[t]he absence of prearrangement and coordination of an expenditure with the candidate . . . not only undermines the value of the expenditure of the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." Id. at 47, 96 S.Ct., at 648.

518 U.S. at 615 (emphasis added). The Court in Colorado I further stated:

> [a] party may not simply channel unlimited amounts of even undesignated contributions to a candidate, since such direct transfers are also considered contributions and are subject to the contribution limits on a "multicandidate political committee." § 441a(a)(2). The greatest danger of corruption, therefore, appears to be from the ability of donors to give sums up to $20,000 to a party which may be used for independent party expenditures for the benefit of a particular candidate. We could understand how Congress were it to conclude that the potential for evasion of the individual contribution limits was serious matters, might decide to change the statute's limitations on contributions to political parties. Cf. California Medical Assn., 453 U.S. at 197-199, 101 S.Ct. at 2722-2723 (plurality opinion) (danger of evasion of limits on contribution to candidates justified prophylactic limitation on contributions to PAC's). But we do not believe that the risk of corruption present here could justify the "markedly greater burden on basic freedoms caused by" the statute's limitations on expenditures. Buckley, 424 U.S. at 44, 96 S.Ct. at 646-647. See also id. at 46-47, 51, 96 S.Ct. at 647-648, 650; NCPAC, supra at 498, 105 S.Ct. at 1469. Contributors seeking to avoid the effect of the $1000 contribution limit indirectly by donations to the national party could spend the same amount of money (or more) themselves more directly by making their own independent expenditures promoting the candidate. See Buckley, supra at 44-48, 96 S.Ct. at 646-649 (risk of corruption by individuals independent expenditures is insufficient to justify limits on such spending). If anything an independent expenditure made possible by at $20,000 donation, but controlled and directed by a party rather than the donor would seem less likely to corrupt than the same (or a much larger) independent expenditure made directly by that donor. In any case, the constitutionally significant fact, present equally in both instances, is the lack of coordination between the candidate and the source of the expenditure. See Buckley, supra, at 45-46, 96 S.Ct. at 647-648; NCPAC, supra at 498, 105 S.Ct. at 1469. This fact prevents us from assuming, absent convincing evidence to the contrary, that a limitation on political parties' independent expenditures is necessary to combat a substantial danger of corruption of the electoral system.

518 U.S. at 616-618 (emphasis added). Thus, the Court has recognized that so-called "independent expenditures" by a political party – made without coordination with a candidate – are protected by the First Amendment.

The focus of your question is the disclosure requirements of § 8-13-1308. As noted, this provision requires a political party to "file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more." The term "anything of value" is to include "contributions received which may be used for the payment of operation expenses of a political party. . . ." In addition, "[a] political party must also comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee." Thus, as noted above, it is our understanding that, based upon the Krawcheck decision, out of an abundance of caution, the SEC has required a political party to disclose only contributions to its operating account.

The Supreme Court addressed the issue of disclosure of contributions to a political party in Buckley v. Valeo, supra, noting that in certain instances, the requirement of disclosure may contravene constitutional rights as applied. In Buckley, the Court stated:

> [u]nlike the overall limitations on contributions and expenditures, the disclosure requirements impose no ceiling on campaign-related activities. But we have repeatedly found that compelled disclosure in itself can seriously infringe on privacy of association and belief guaranteed by the First Amendment. E.g. Gibson v. Florida Legislative Comm., 372 U.S. 538, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); Bates v. Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1153, 2 L.Ed. 1488 (1958).
>
> We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since NAACP v. Alabama we have required that the subordinating interests of the State must survive exacting scrutiny. . . . We also have insisted that there be a "relevant correlation" . . . or "substantial relation" . . . between the governmental interest and the information required to be disclosed. See Pollard v. Roberts, 283 F.Supp. 248, 257 (E.D. Ark.) (three-judge court) aff'd, 393 U.S. 14, 89 S.Ct. 47, 21 L.Ed.2d 14 (1968) (per curiam). This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct requiring disclosure. NAACP v. Alabama, supra, 357 U.S. at 461, 78 S.Ct. at 1171. Cf. Kusper v. Pontikes, 414 U.S. at 57-58, 98 S.Ct. at 307-308.
>
> As we have seen, group association is protected because it enhances "(e)ffective advocacy." NAACP v. Alabama, supra, 357 U.S. at 460, 78 S.Ct. at 1170. The right to join together, "for the advancement of beliefs and ideas," ibid, is diluted if it does

> not include the right to pool money through contributions, for funds are often essential if "advocacy" is to be truly or optionally "effective." Moreover, the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations, for "(f)inancial transactions can reveal much about a person's Activities, associations, and beliefs." California Bankers Assn. v. Shultz, 416 U.S. 21, 78-79, 94 S.Ct. 1494, 1526, 39 L.Ed.2d 812 (1974) (Powell, J. concurring). Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably. In Bates, for example, we applied the principles of NAACP v. Alabama and reversed convictions for failure to comply with a city ordinance that required the disclosure of "dues, assessments, and contributions paid, by when and when paid." 361 U.S. at 518, 80 S.Ct. at 414. See also United States v. Rumley, 345 U.S. 41, 73 S.Ct. 543, 97 L.ED. 770 (1953) (setting aside a contempt conviction of an organization official who refused to disclose names of those who made bulk purchases of books sold by the organization).

424 U.S. at 64-66 (emphasis added).

On the other hand, Buckley also recognized that the government possesses a strong interest "to be vindicated by" disclosure requirements in the context of support or opposition to a candidate. According to the Court, disclosure "provides the electorate with information 'as to where political campaign money comes from and how it is to be spent by the candidate.'" Id. at 66. Second, the Court noted that disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." Id. at 67. Third, disclosure requirements "are an essential means of gathering the data necessary to detect violation of the contribution limitations. . . ." Id. at 68.

As stated earlier, applying the lesser "exacting scrutiny" standard, "the Supreme Court has upheld a wide range of disclosure laws pertaining to campaign-related speech, including disclosure requirements applicable to candidates, political party and independent political committees." Malloy, supra at 441. Buckley, as discussed, was one such instance. Moreover, "[i]n Citizens United, [558 U.S. 310 (2010)] the Court by an 8-1 margin again upheld the EC ["Electioneering Communications"] disclosure requirements both facially and as-applied in certain commercial advertisements promoting a campaign-related film." Malloy, supra at 442. Thus, disclosure requirements "serve substantial governmental interests."

It is also noteworthy that § 8-13-1300(26)'s definition of "political party" is virtually the same as that reviewed in Buckley. Whether such governmental interests enunciated in Buckley are sufficient to overcome the important First Amendment interests present, requires determining the extent of "the burden that they place on individual rights." Id. In most instances, noted the Court, disclosure is likely "to be the least restrictive means of curbing the evils of campaign ignorance and corruption."

As stated, Buckley's analysis has been maintained by the Supreme Court in its more recent cases. In Citizens United, 558 U.S. at 366-367, the Court quoted Buckley extensively with respect to the disclosure provisions "as applied to Hillary and the three advertisements for the movie." Again, as in Buckley, the Citizens United Court noted that ". . . disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' Buckley, 424 U.S. at 64, 96 S.Ct. 612, and 'do not prevent anyone from speaking,' McConnell, [540 U.S.] supra at 201, 124 S.Ct. 519. . . ." 558 U.S. at 366. In Citizens United, the Court reiterated that although the disclosure requirements "were facially upheld, the Court [in Buckley] acknowledged that as-applied challenges would be available if a group could show a 'reasonable probability' that disclosure of its contributers' names 'will subject them to threats, harassment, or reprisals from either Government officials or private parties. '" 558 U.S. at 367 (quoting McConnell, 540 U.S. at 198) (quoting Buckley, 424 U.S. at 74). See also McCutcheon v. Fed. Elect. Comm., 558 U.S. 310, 323 (2014) ["disclosure of contributions minimizes the potential for abuse of the campaign finance system."].

On the other hand, the Court has, on several occasions, determined that disclosure does in fact infringe upon constitutional rights. In McIntyre v. Ohio Elections Comm., 514 U.S. 334 (1995), for example, the Court held that punishment of a pamphleteer for distributing anonymous leaflets opposing a proposed school tax levy violated the First Amendment. Ohio's statute "applie[d] only to unsigned documents designed to influence voters in an election." 514 U.S. at 344. Quoting Buckley, supra, the Court in McIntyre stated that "[t]he First Amendment affords the broadest protection to such political expression in order 'to assure [the] untethered interchange of ideas for the brining about of political and social changes desired by the people.'" 514 U.S., at 346 (quoting Buckley, 424 U.S. at 14).

Moreover, the McIntyre Court noted that "[o]f course, core political speech need not center on a candidate for office. The principles enunciated in Buckley extend equally to issue-based elections such as the school tax referendum that Mrs. McIntyre sought to influence through her handbills." 514 U.S. at 347. In the Court's view, the handbill restriction imposed a restriction on speech even "more intrusive then the Buckley requirement. . ." [resting] "on different and less powerful state interests." According to the Court, "[t]he Federal Election Campaign Act of 1971, at issue in Buckley, regulates only candidate elections, not referenda or other issue-based ballot measures. . . ." Id. at 366. Thus, "Ohio has not shown that its interest in preventing the misuse of anonymous election-related speech justifies the prohibition of all uses of that speech." Id. at 357.

Even though McIntyre distinguished the campaign disclosure requirements addressed in Buckley, it is important to note that Justice Thomas maintains the view that McIntyre overruled Buckley's holding with respect to the validity of disclosure requirements. In McConnell, Justice Thomas, in concurrence, and dissent, stated:

> . . . this Court has explicitly recognized that "the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in

> requiring disclosure as a condition of entry," and thus "an author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." (citing McIntyre, 514 U.S. at 342).

540 U.S. at 276. Justice Thomas thus stated that ". . . the only reading of McIntyre that remains consistent with the principles it contains is that it overturned Buckley to the extent that Buckley upheld a disclosure requirement solely based on the governmental interest in providing information to the voters." Id. at 277. Furthermore, in John Doe No. 1 v. Reed, 561 U.S. 186, 238-239 (Thomas J., dissenting), Justice Thomas reiterated his position concerning McIntyre. In a case upholding a statute as applied to the disclosure requirements of referendum petitions, he explained:

> [i]n McIntyre . . . the Court held that an Ohio law prohibiting anonymous political pamphleteering violated the First Amendment. One of the interests Ohio had invoked to justify that law was identical to Washington's here: the "interest in providing the electorate with relevant information." Id., at 348, 115 S.Ct. 1511. The Court called that interest "plainly insufficient to support the constitutionality of [Ohio's] disclosure requirement." Id. at 349, 115 S.Ct. 1511. "The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit." Id. at 348, 115 S.Ct. 1511. "Don't underestimate the common man," we advised. Id. at 348, n. 11, 115 S.Ct. 1511 (internal quotation marks omitted).

A majority of the Court has not adopted the position of Justice Thomas.

Two other decisions are also instructive with respect to your question. In Pollard v. Roberts, 283 F.Supp. 248 (E.D. Ark. 1968) (three judge court), affd., 393 U.S. 14 (1968), an earlier decision, cited with approval in Buckley, a prosecuting attorney subpoenaed information concerning the identity of individual contributors and the amounts of their contributions to a political party. Such subpoenas, however, were enjoined. The Court concluded that there had been no showing that this information sought was reasonably relevant to the prosecution's investigation of alleged vote buying, or that the public interest, if any, was served by such disclosure. Nor was the information sought sufficiently compelling to outweigh the constitutionally protected interests of the political party. With respect to the First Amendment issues raised by the subpoena, the Court cited Gibson v. Fla. Leg. Invest. Comm., 372 U.S. 539 (1963), Bates v. City of Little Rock, 361 U.S. 516 (1960) and NAACP v. Ala., 357 U.S. 449 (1958), among other decisions, as instructive to the question. Based upon these cases, the Court stated:

> [t]he rationale of those decisions is that the First and Fourteenth Amendments protect the rights of people to associate together to advocate and promote legitimate, albeit controversial, political, social, or economic action; that when the objective of the group or the group itself is unpopular at a given time or place, revelation of the identities of those who have joined themselves together or have affiliated with the group may provoke reprisals from those opposed to the group or its objectives; and

> that the occurrence or apprehension of such reprisals tends to discourage the exercise of the rights which the Constitution protects. In such circumstances, disclosure of the identities of members of the group can be compelled only by showing that there is a rational connection between such disclosure and a legitimate governmental end, and that the governmental interest in the disclosure is cogent and compelling.

283 F.Supp. at 256-57.

Also instructive is the Supreme Court decision in Brown v. Socialist Workers '74 Campaign, 459 U.S. 87 (1982). There, the question was "whether certain disclosure requirements of the Ohio Campaign Expense Reporting Law . . . can be constitutionally applied to the Socialist Workers Party, a minor political party which historically has been the object of harassment by government officials and private parties." The Court concluded that such information from the party, including reporting the names and addresses of contributors and recipients of campaign disbursements, was constitutionally protected from disclosure. In that regard, the Court noted:

> [t]he Ohio statute requires every political party to report the names and addresses of campaign contributors and recipients of campaign disbursements. In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Court held that the First Amendment prohibits the government from compelling disclosures by a minor political party that can show a "reasonable probability" that the compelled disclosures will subject those identified to "threats, harassment or reprisals." Id. at 74, 96 S.Ct. at 661. Employing this test, a three-judge District Court for the Southern District of Ohio held that the Ohio statute is unconstitutional as applied to the Socialist Workers Party. We affirm.

459 U.S. at 88 (emphasis added).

Brown set forth the requirements which had been stated in Buckley, as follows:

> "The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." Id. at 74, 96 S.Ct. at 661.
>
> The Court's acknowledged that "unduly strict requirements of proof could impose a heavy burden" on minor parties. Ibid.

> "The proof may include, for example, specific evidence of past and present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient. New parties that have no history upon which to draw may be able to offer evidence of reprisals against individuals, or organizations holding similar views."
>
> Ibid.

Id. at 93-94. In the Court's opinion in Brown, therefore,

> . . . [c]ompelled disclosure of the names of such recipients of expenditures could therefore cripple a minor party's ability to operate effectively and therefore reduce "the free circulation of ideas both within and without the political arena." [citations omitted]. We hold, therefore, that the test announced in Buckley for safeguarding the First Amendment interests of minor parties and their members and supporters applies not only to the compelled disclosure of campaign contributors but also to the compelled disclosure of campaign disbursements.

Id. at 98.

As noted above, Section 8-13-1300(26) defines a "political party" as "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." This is the same definition of "political party" reviewed in Buckley, which upheld the disclosure requirement there. A 1993 opinion of the Ethics Commission concluded that "the Ethics Reform Act does not require a political party to disclose contributions specifically solicited for non-campaign related expenses [operation expenses, i.e. rent, telephone bills or payroll], provided such funds are maintained in an account separate from the campaign account and are not used to influence the outcome of elective offices or ballot measures." SECAO 093-059 (January 20, 1993). See also SECAO 92-240 ["the Act distinguishes, and the Commission has recognized, differences between contributions to a political party's campaign account and donations to a political party's operating account."].

Minor political parties are included within the definition of "political party" found in § 8-13-1300(26). Typically, minor parties nominate their candidates for placement on the ballot by convention. Our courts have been vigilant in protecting the constitutional rights of minority parties in South Carolina, including First Amendment protections. See e.g. Toporek v. S.C. State Election Comm., 362 F.Supp. 613, 620 (D.S.C. 1973) where Judge Blatt on behalf of a three-judge court held that

> [w]hile this court is most reluctant to declare a state act unconstitutional for the reasons heretofore set forth we hold that those provisions of Section 23-264, as amended, of the South Carolina Code of Laws, which establish filing dates for candidates nominated other than by party primary method, are unconstitutional in

> that they are in violation of the equal protection clause of the Fourteenth Amendment, and, as these provisions unnecessarily burden the right of the citizenry to vote and seek office, because they violate the right to peaceably assemble and petition the government for redress of grievances as guaranteed by the First Amendment.

As discussed above, Krawcheck, in relying upon the Fourth Circuit in Leake, makes it clear that the Supreme Court has "'recognized the need to cabin legislative authority over elections in a manner that sufficiently safeguards vital First Amendment Freedoms.'" 759 F.Supp.2d at 714-15, quoting Leake, 525 F.3d at 281. Thus, "'only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable. '" Id.

In this instance, the requirement of disclosure by a political party, pursuant to § 8-13-1308, possesses a number of constitutional pitfalls. While disclosure of contributions to a party's "operational account" presents no constitutional issue, the campaign accounts' disclosures may well be different. As noted, where the party expends funds to support or oppose a particular candidate, disclosure is generally upheld. However, as Buckley readily acknowledges, ". . . public disclosure of contributions to . . . political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights, and they must be weighed carefully against" the State's interest in preventing corruption. Buckley, 424 U.S. at 68.

The problem arises because, in some instances, contributions may be made to a political party, and the political party may use such contributions for purposes such as issue advocacy. issue advocacy. See McConnell v. Fed. Elect. Comm., 251 F.Supp.2d 176, 837 (D.C. D.C. 2003) [contributions to state and local political parties may include other purposes including "funding administrative and overhead costs, voter registration or generic get-out-the-vote activities or supporting ballot measures or issue advocacy. . . ."]. This is one instance in which blanket disclosure requirement placed upon a political party may be constitutionally problematical. Where the party may use its campaign account for issue advocacy, Krawcheck and Leake come into play.

Thus, we now proceed to your question regarding Krawcheck. In Leake, the case upon which Krawcheck heavily relied, the Fourth Circuit explained that Buckley's use of the phrase "the major purpose" of supporting or opposing a candidate for purposes of campaign regulation was highly significant in any First Amendment analysis. According to the Fourth Circuit,

> [i]f organizations were regulable merely for having the support of opposition of a candidate as "a major purpose," political committee burdens could fall on organizations primarily engaged in speech on political issues unrelated to a particular candidate. This would not only contravene both the spirit and the letter of Buckley's

> "unambiguously campaign related" test, but it would also subject a large quantity of ordinary political speech to regulations. See e.g. [424 U.S.] . . . at 80, 86 S.Ct. 612.

524 F.3d at 287-88. Citing cases such as Fed. Elec. Comm. v. Mass. Citizens For Life, Inc., 479 U.S. 238 (1986), McConnell, 540 U.S. at 170, n. 64 and others, the Court in Leake concluded:

> [t]hus, we are convinced that the Court in Buckley did indeed mean exactly what it said when it held that an entity must have "the major purpose" of supporting or opposing a candidate to be designated a political committee. Narrowly construing the definition of political committee in that way ensures that the burden of political committee designation only fall on entities whose primary or only activity are within the 'core" of Congress's power to regulate elections. Buckley, 424 U.S. at 79, 96 S.Ct. 612. Permitting the regulation of organizations as political committees when the goal of influencing elections is merely one of multiple "major purposes" threatens the regulation of too much ordinary political speech to be constitutional.

Id. at 288-89.

With respect to a political party, the Supreme Court, in Colorado Republican Fed. Campaign Comm., supra, (Colorado I), has stated that ". . . one of the main purposes of a political party is to support its candidates in elections." 518 U.S. at 634 (emphasis added). Moreover, in Wash. State Repub. Pty. v. Wash. State Pub. Disclosure Comm., 4 P.3d 808 (Wash. 2000), the Washington Supreme Court addressed the question of the nature of a political party's purchase of advertising attacking an incumbent political candidate's stand on criminal law issues. The Washington Republican Party spent thousands of dollars on advertising on so-called "Tell Gary Locke" television ads critical of a gubernatorial candidate's crime record.

In the Washington Supreme Court's view, Buckley "drew a distinction between contributions and expenditures based upon a 'fundamental constitutional difference between money spent to advertise one's own views independently of the candidate's campaign and money contributed to the candidate to be spent on his [or her] campaign.'" 4 P.3d at 815 (quoting Fed. Elec. Comm'n v. Nat. Conservative Pol. Action Committee, 470 U.S. 480, 497 (1985). The Court summarized Buckley's conclusions this way:

> . . . the Court in Buckley approved financial limitations on contributions to candidates, but held unconstitutional the limitations on expenditures by individuals and groups whose expenditures were not coordinated with candidates. Importantly, the Court also distinguished between express advocacy of candidates for election and issue advocacy, rejecting FECA's burdens on First Amendment freedoms where issue advocacy is concerned.

Id. at 817.

In the Court's view, "Buckley intended to protect issue advocacy which discusses and debates issues in the context of an election." Id. at 821. According to the Court, "[w]hen a political party makes expenditures for issue advocacy the threat of corruption posed by direct contributions to the candidate is absent. By the same token, use of contributions for issue advocacy does not circumvent constitutional limitations on contributions to candidates." Id. at 825-26. Quoting Colorado Republican, supra, (Colorado I), the Court recognized that "[t]he independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees." Id. at 826. Moreover, "the ability to join together for the purposes of issue advocacy through a political party is an important aspect of political speech, especially given the role which political parties can play. . . ." Id. at 278.

Scholarly commentary following the Citizens United decision notes that disclosure with respect to "issue advocacy" is constitutionally problematical. As one commentator has noted,

> . . . the Supreme Court has almost without exception upheld disclosure statutes connected to campaign-related spending or spending that relates to the nomination or election of a candidate for public office. The Court, however, has on occasion turned a more skeptical eye to disclosure connected to political "issue advocacy" or advocacy on political issues that is not related to candidate election. To be sure, the line between campaign-related speech has sometimes proven difficult to draw. . . .

Malloy, supra at 440-41 (emphasis added). Moreover,

> . . . [t]he application of disclosure requirements to mixed-purpose groups (i.e. those groups that engage in both electoral and issue advocacy) straddles the divide between campaign-related advocacy and issue advocacy in the Supreme Court's First Amendment jurisprudence. The Supreme Court has not provide and definitive guidance on the question of how much disclosure can be required from mixed-purpose groups whose major purposes does not relate to candidate elections.

Id. at 445. Malloy noted that opponents of disclosure requirements have "seized upon the major purpose test, arguing that because comprehensive disclosure requirements are comparable to imposing PAC status, the requirements are unconstitutional as applied to mixed-purpose groups." Id. at 447. Malloy cited the Fourth Circuit Leake case, as a decision which opened the door to declaring unconstitutional disclosure statutes which impinged upon issue advocacy. Malloy attempted to distinguish the situation in Leake from one in which only disclosure was regulated:

> [b]y contrast, the Fourth Circuit in North Carolina Right to Life, Inc. v. Leake ("NCRTL"). . . and the Tenth Circuit in New Mexico Youth Organized v. Herrera ("NMYO"). . . and Colorado Right to Life Committee, Inc. v. Coffman ("CRTL"),. . . have declared unconstitutional state statutes that imposed political committee status on non-major purpose groups. In 2008, in North Carolina Right to Life v. Leake, for instance, the Fourth Circuit struck down a North Carolina law that defined a

> "political committee" as a group that had influencing elections as "a major purpose," not "the major purpose.". . . However, in many of these cases the state statutes under review extended beyond basic disclosure requirements and imposed additional substantive requirements on "political committees." For example, in evaluating North Carolina's definition of "political committee," the Fourth Circuit specifically noted that "political committees" were not only subject to disclosure requirements under North Carolina law, but also "face[d] limits on the amount of donations they can receive in any one election cycle from any individual or entity." . . . Similarly, "political committee" status as provided by the Colorado statute under review by the Tenth Circuit in CRTL entailed not only disclosure, but also strict contribution requirements. . . Therefore, to some extent, the decisions of the Fourth and Tenth Circuits enforcing the major purpose test involved state statutes that extended beyond basic disclosure requirements and imposed substantive contribution restrictions on political committees. . . Thus, there is a strong argument that even comprehensive PAC-style disclosure-only laws pass First Amendment muster.

Id. at 448-49.

Moreover, just as significantly, § 8-13-1300(26)'s definition of "political party" includes minor parties. Thus, as in the Brown decision, the statute leaves the door open for a constitutional challenge to requiring disclosure by those minor parties if the party or contributors are subject to harassment and/or retaliation. A court may, as in Brown, rule that the definition, as employed in § 8-13-1308(G) is unconstitutional as applied. See Brown, supra.

Conclusion

In our opinion, the decision of the SEC to suspend enforcement of § 8-13-1308 because of First Amendment concerns, as expressed in Krawcheck and Leake, was a prudent one. There are indeed credible First Amendment issues raised by enforcement of § 8-13-1308. We recognize, of course, that a primary purpose of a political party is electing candidates. However, ". . . it would ignore reality to think that the party role is adequately described by speaking generally of electing candidates." Fed. Elec. Comm. v. Colorado Repub. Fed. Campaign Comm., 533 U.S. 431, 450-51 (2001) (Colorado II). Certainly after Krawcheck and Leake, enforcement of § 8-13-1308 will likely result in a court challenge. We thus advise that any clarification or modification of the statute should not come from the Commission, but from the General Assembly.

Krawcheck makes it clear that the Supreme Court (particularly in Buckley v. Valeo) "recognized the need to cabin legislative authority over elections in a manner that sufficiently safeguards First Amendment Freedoms." According to Krawcheck, relying upon the Fourth Circuit decision in Leake, a statutory definition which does not have as the main purpose ". . . the nomination or election of a candidate" punishes First Amendment protected speech. Leake affirms that Buckley meant what it said in requiring "the main purpose" test.

Thus, in our view, a court could well conclude that § 8-13-1308, as guided by § 8-13-1300(26)'s definition of "political party," infringes upon First Amendment speech. For one thing, contributions to a political party's campaign account (as opposed to its operational account, which raises no First Amendment issues) may be used for issue advocacy as opposed to the nomination or election of a candidate. As Justice Kennedy wrote in Colorado I, '[p]olitical parties have a unique role in serving the principle of open, robust debate on public issues; they exist to advance the members' shared political beliefs." Justice Kennedy continued: "A political party has its own traditions and principles that transcend the interests of individual candidates and campaigns; but in the context of particular elections, candidates are necessary to make the party's message known and effective, and vice versa." McConnell v. Fed. Elec. Comm., 251 F.Supp.2d at 766-67 (quoting Colorado I, 518 U.S. at 628 (Kennedy, J., concurring in the judgment and dissenting in part).

As noted above, in Colorado I, the Supreme Court also recognized that "one of the main purposes of a political party is to support its candidates in election." (emphasis added). While clearly a party's campaign account is most often used for the nomination or election of a candidate, that is only one "main purpose" for its use. Such account also may be used for issue advocacy. McConnell, 251 F.Supp.2d at 759-60. Both Leake and Krawcheck indicate that where the election of or defeat of a candidate is not "the main purpose," but instead influencing elections are "a major purpose," a statute may well violate the First Amendment. Thus, even though the definition of "political party" in § 8-13-1300(26) is virtually identical to that upheld in Buckley, clearly First Amendment issues continue to be present in any enforcement of § 8-13-1308 as the statute is written.

In addition, there is no doubt that the definition of "political party" in § 8-13-1300(26) encompasses minor parties. That being the case, if a minor political party or its members demonstrate harassment and/or retaliation against them, Buckley and Brown, supra dictate that a court may well deem § 8-13-1308(G) to be unconstitutional as applied.

Thus, the prudent approach is the one which the Commission has chosen: to enforce § 8-13-1308 with respect to a political party's operating account, but not its campaign account. Such action by the Commission is supported by Krawcheck, Leake, Buckley and Brown. As Judge Wooten clearly stated in Krawcheck, the constitutional problems which the SEC has identified are for the General Assembly, not the Commission, to address.

Sincerely,

[redacted]

Robert D. Cook
Solicitor General

Attachment E

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C 2024-249

COMPLAINANT: State Ethics Commission
ADDRESS: 201 Executive Center Drive
Suite 150
Columbia, SC 29210

TELEPHONE NUMBER: (803) 253-4192

RESPONDENT: Chesterfield County Republican Party
ADDRESS: Mr. Banks Burch
240 Rock Creek Church Road
Jefferson, SC 29718

TELEPHONE NUMBER: (843) 287-0484

Section 8-13-1308 (G), S.C. Code Ann., 1976, as amended, requires political parties to file Operating Disclosures within ten (10) days of receiving or expending $500, within ten (10) days of the end of each quarter; and a final report when the operating account is closed.

Records of the State Ethics Commission indicate that an Operating Disclosure was due no later than July 10, 2020, October 10, 2020, January 10, 2021, April 10, 2021, July 10, 2021, October 10, 2021, January 10, 2022, April 10, 2022, July 10, 2022, October 10, 2022, January 10, 2023, April 10, 2023, July 10, 2023, October 10, 2023, January 10, 2024, and April 10, 2024.

Respondent was reminded of the filing requirements by certified letters dated July 3, 2023, August 1, 2023, and August 2, 2023 as described in the attached. To date, no properly completed July 10, 2020, October 10, 2020, January 10, 2021, April 10, 2021, July 10, 2021, October 10, 2021, January 10, 2022, April 10, 2022, July 10, 2022, October 10, 2022, January 10, 2023, April 10, 2023, July 10, 2023, October 10, 2023, January 10, 2024, and April 10, 2024 Operating Disclosure have been received. All in violation of Section 8-13-1308(G), S.C. Code Ann., 1976, as amended.

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF Richland

Personally appeared before me Meghan Walker Dayson who, first being duly sworn, says that she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of her own knowledge, except for those matters therein based upon information and belief, and as to those she believes them to be true.

[redacted]
Meghan Walker Dayson, Executive Director

Sworn to and subscribed before me this
8th day of July, 2024

[redacted]
Notary Public for South Carolina
My Commission expires 01/22/26

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
ELECTRONIC COPIES WILL NOT BE ACCEPTED

Chesterfield County Republican Party

July 3, 2023: $1,200.00 penalty letter is sent certified to 1711 Sam Jones Road in Patrick for failure to file the July 10, 2020, October 10, 2020, January 10, 2021, April 10, 2021, July 10, 2021, October 10, 2021, January 10, 2022, April 10, 2022, July 10, 2022, October 10, 2022, January 10, 2023, and April 10, 2023 Operating Disclosure.

August 1, 2023: The certified letter is being returned as Undeliverable. The Chesterfield County Republican Party's Facebook page is administered by Banks Burch, and the certified letter is mailed to him at 240 Rocky Creek Church Road in Jefferson.

August 2, 2023: $100.00 penalty letter is sent certified for failure to file the July 10, 2023 Operating Disclosure.

August 3, 2023: According to the United States Postal Service website, the certified letter dated August 1, 2023 is delivered at 1:15 p.m.

August 5, 2023: According to the United States Postal Service website, the certified letter dated August 2, 2023 is delivered at 11:32 a.m.

August 13, 2023: Penalties begin accruing at $10 per day per quarterly Operating Disclosure for a total of $1,200 per day.

August 14, 2023: The certified letter dated July 3, 2023 is returned as "Return to Sender – Attempted Not Known".

August 15, 2023: Penalties begin accruing at $10 per day for the July 10, 2023 Operating Disclosure

August 23, 2023: Penalties begin accruing at $100 per day per quarterly Operating Disclosure for a total of $1,200 per day.

August 25, 2023: Penalties begin accruing at $100 per day for the July 10, 2023 Operating Disclosure

March 20, 2024: Legal Department staff speaks with Banks Burch, who stated he had not filed since he took over in 2020. He was told by Hope Walker with the South Carolina Republican Party they were not required to file, and staff explains the requirement to file.

April 29, 2024: Disclosure Department staff leaves a voicemail for Mr. Burch so that she can assist him with the reports.

May 21, 2024: Legal Department staff leaves a voicemail for Mr. Burch.

July 1, 2024: After no response, complaint is filed.

Previous or Current Non-Compliance

January 10, 2009 Operating Disclosure	Paid $100.00
April 10, 2009 Operating Disclosure	Paid $100.00
October 10, 2009, January 10, 2010, April 10, 2010, and July 10, 2010 Operating Disclosures	Paid $400.00
July 10, 2019, October 10, 2019, January 10, 2020, and April 10, 2020 Operating Disclosures	Owes $400.00

UNITED STATES POSTAL SERVICE

Date Produced: 08/07/2023

SOUTH CAROLINA STATE ETHICS COMMISS:

The following is the delivery information for Certified Mail™/RRE item number 9214 8969 0099 9790 1423 8111 57. Our records indicate that this item was delivered on 08/05/2023 at 11:32 a.m. in JEFFERSON, SC 29718. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

8-15-23: $10/day

8-25-23: $100/day

Customer Reference Number: Chesterfield County Republican

State of South Carolina
State Ethics Commission

8/22

SCOTT E. FRICK, CHAIRMAN
F. XAVIER STARKES, VICE CHAIRMAN
BRYANT S. CALDWELL
AJ HOLLOWAY

BRANDOLYN THOMAS PINKSTON
MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

August 2, 2023

CERTIFIED MAIL #: 9214896900999790142381157

delivered 8/5/23

Chesterfield County Republican Party
Mr. Joe B. Burch
240 Rocky Creek Church Road
Jefferson, SC 29718

Dear Mr. Burch:

As a Political Party with an operating account, the Ethics Reform Act requires you to file certain reports with the State Ethics Commission. An audit of your account indicates the following:

The July 10, 2023 Operating Disclosure has not been filed.

In accordance with Section 8-13-1510, South Carolina Code Ann., 1976, as amended, a late filing penalty of $100.00 is hereby levied. If the required Operating Disclosure is not filed electronically within ten calendar days of receipt of this letter, additional penalties will be levied at $10 per day per report for the first ten days and $100 per day per report for each additional day until the penalty reaches $5,000 per report, and a complaint will be filed against you. In addition, the penalty amount, your name, address (city) and position will be posted on the State Ethics Commission's website. If extenuating circumstances prevented you from filing the reports as required, you may file a written appeal of this late filing penalty. To file an appeal, you must do the following within ten (10) days of the date you receive this letter:

- Send a check or money order made payable to the State Ethics Commission
- File all missing reports online at https://ethics.sc.gov
- Provide a written statement describing any extenuating circumstances and include any supporting documentation.

Please be advised that all appeals must be in writing and must follow the above directions. NO phone or e-mail appeals will be accepted. Please contact this office if we can provide further information.

Sincerely,

[redacted]

Lindsey New
Administrative Coordinator I

com300

Electronic Filing
Operating Disclosure: Review

NR of 2023 July 10th report

2019 April 10th Report Review

Name: The Republican Party of Chesterfield County
Filing Type: Original, Filed

Directions
To review information you have entered, click each tab below.

Summary Contributions Expenditures

Demographic Information

1711 Sam Jones Road
Patrick, SC 29584
843.319.8238
Chesterfield County

Report Type

2019 April 10th Report

Contributions	This Period
A. Individual Contributions or other (+)	$0.00
B. In-Kind Contributions (+)	$0.00
C. Total Contributions (=)	**$0.00**

Expenditures	This Period
A. In-Kind Expenditures	$0.00
B. Expenditures (+)	$0.00
C. Total Expenditures (=)	**$0.00**

Balance of Contributions	This Period
A. Contributions on Hand (Beginning this Period)	$1,975.35
B. Total Contributions (This Period) (+)	$0.00
C. Total Expenditures (This Period) (-)	$0.00
D. Contributions On Hand (Period End) (=)	**$1,975.35**

In Spartan Through 4/10/23 OD

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If you are finished viewing this report, you can return to your list of filings by clicking the "Save" button below.

UNITED STATES POSTAL SERVICE

Date Produced: 08/07/2023

SOUTH CAROLINA STATE ETHICS COMMISS:

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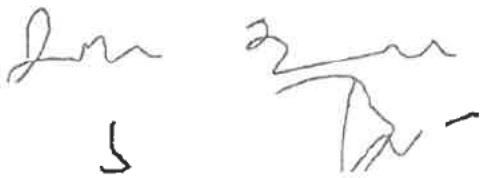
Signature of Recipient :



Address of Recipient : 710 R

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

8-13-23: $120/day
8-23-23: $1200/day

Customer Reference Number: Chesterfield County Republican

8/21

State of South Carolina
State Ethics Commission

SCOTT E. FRICK, CHAIRMAN
F. XAVIER STARKES, VICE CHAIRMAN
BRYANT S. CALDWELL
AJ HOLLOWAY

BRANDOLYN THOMAS PINKSTON
MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

August 1, 2023
SECOND NOTICE

CERTIFIED MAIL #: 9214896900999790142380892 8

delivered 8/3/23

Chesterfield County Republican Party
Mr. Joe B. Burch
240 Rocky Creek Church Road
Jefferson, SC 29718

Dear Mr. Burch:

As a Political Party with an operating account, the Ethics Reform Act requires you to file certain reports with the State Ethics Commission. An audit of your account indicates the following:

The July 10, 2019 Operating Disclosure has not been filed.

The October 10, 2019 Operating Disclosure has not been filed.

The January 10, 2020 Operating Disclosure has not been filed.

The April 10, 2020 Operating Disclosure has not been filed.

The July 10, 2020 Operating Disclosure has not been filed.

The October 10, 2020 Operating Disclosure has not been filed.

The January 10, 2021 Operating Disclosure has not been filed.

The April 10, 2021 Operating Disclosure has not been filed.

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The January 10, 2022 Operating Disclosure has not been filed.

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The July 10, 2022 Operating Disclosure has not been filed.

The October 10, 2022 Operating Disclosure has not been filed.

CONTINUED ON THE NEXT PAGE

The January 10, 2023 Operating Disclosure has not been filed.

The April 10, 2023 Operating Disclosure has not been filed.

In accordance with Section 8-13-1510, South Carolina Code Ann., 1976, as amended, a late filing penalty of $1,600.00 is hereby levied. If the required Operating Disclosures are not filed electronically within ten calendar days of receipt of this letter, additional penalties will be levied at $10 per day per report for the first ten days and $100 per day per report for each additional day until the penalty reaches $5,000 per report, and a complaint will be filed against you. In addition, the penalty amount, your name, address (city) and position will be posted on the State Ethics Commission's website. If extenuating circumstances prevented you from filing the reports as required, you may file a written appeal of this late filing penalty. To file an appeal, you must do the following within ten (10) days of the date you receive this letter:

File all missing reports online at https://ethics.sc.gov
Provide a written statement describing any extenuating circumstances and include any supporting documentation.

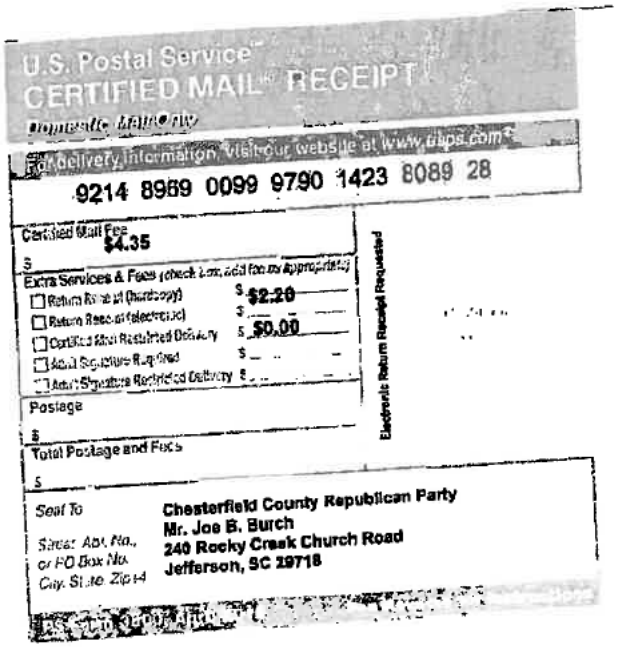
Please be advised that all appeals must be in writing and must follow the above directions. NO phone or e-mail appeals will be accepted. Please contact this office if we can provide further information.

Sincerely,

[redacted]

Lindsey New
Administrative Coordinator I

com300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Return Receipt (hardcopy) $2.20
Return Receipt (electronic) $ —
Certified Mail Restricted Delivery $ $0.00
Adult Signature Required $ —
Adult Signature Restricted Delivery $ —
Postage
Total Postage and Fees
Sent To
Chesterfield County Republican Party
Mr. Joe B. Burch
240 Rocky Creek Church Road
Jefferson, SC 29718
Street and Apt. No., or PO Box No.
City, State, ZIP+4
Electronic Return Receipt Requested



Banks Burch

606 friends

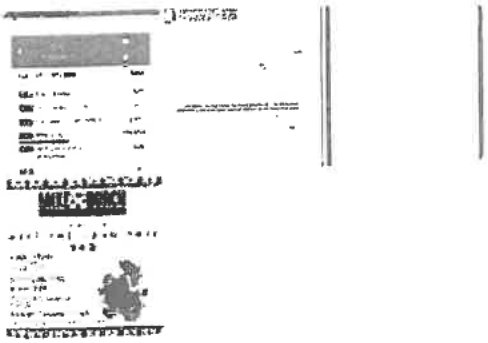
Message View profile

Group posts

Intro

Admin of **Chesterfield County GOP** since March 8, 2021

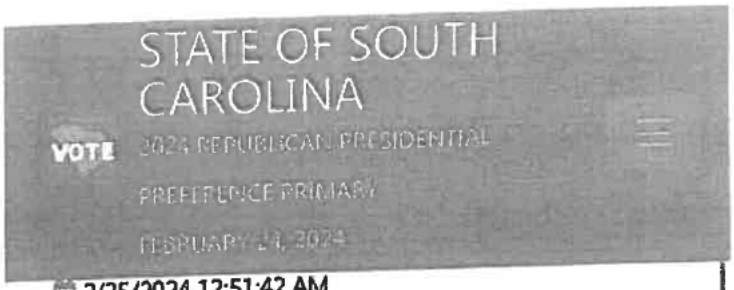
Recent Photos



Group posts

Banks Burch Chesterfield County GOP
February 25 at 8:00 AM

South Carolina spoke yesterday and here is your answer.
I want to thank everyone that voted yesterday and in early voting. Also the folks that worked the polls yesterday. It's not a glamorous job but a necessary one.



2/25/2024 12:51:42 AM

REP President (Vote For 1)

Counties reporting **100%**	Votes
REP Ryan L Binkley	527
REP Chris Christie - WITHDREW	657
REP Ron DeSantis - WITHDREW	2,951
REP Nikki Haley	298,674
REP Vivek Ramaswamy - WITHDREW	726
REP David Stuckenberg	360
REP Donald J Trump	451,905
	755,800

8 5 comments 2 shares

Like Comment Share

View more comments

Rodney Elvis
Wow 298,674 democrats voted for Nicki and she still lost her Home state.
2w Like Reply Share 3

Submit your first comment...

Banks Burch Chesterfield County GOP
February 24 at 8:38 AM ·

Good Morning,
If you did not already via early voting or since the polls opened I urge you to. No matter you pick we have to show the democrats what the folks in South Carolina think about the current administration.
If you are unsure where your polling location is visit Www.scvotes.org. Put in your information and it will show your specific location.

SCVOTES.ORG
Home - SC Votes - South Carolina Election Commission

2

Like Comment Share

Submit your first comment...

Banks Burch [redacted] Chesterfield County GOP
February 20 at 2:47 PM ·

Cody T. Mitchell for SC House District 65
February 20 at 2:42 PM ·

This will be an exciting event! We are so excited to have area pastors and churches coming together to make this event possible. Come join us as David Barton wi... **See more**

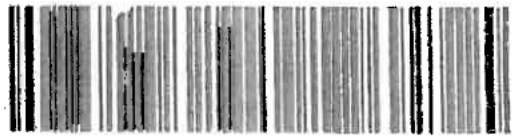
4

Like Comment Share

Submit your first comment...

State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

CERTIFIED MAIL



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US POSTAGE

Chesterfield County Republican Party
Mr. Jack Parker
[redacted]

L.N.

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

ANK BC: 29710999025 *0354-00575-03-45

29210 INT
2958434411

State of South Carolina
State Ethics Commission

7/24

SCOTT E. FRICK, CHAIRMAN
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MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

July 3, 2023

CERTIFIED MAIL #:9214896900999790142365984 1

Chesterfield County Republican Party
Mr. Jack Parker
1711 Sam Jones Road
Patrick, SC 29584

Dear Mr. Parker:

As a Political Party with an operating account, the Ethics Reform Act requires you to file certain reports with the State Ethics Commission. An audit of your account indicates the following:

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- File all missing reports online at https://ethics.sc.gov
- Provide a written statement describing any extenuating circumstances and include any supporting documentation.

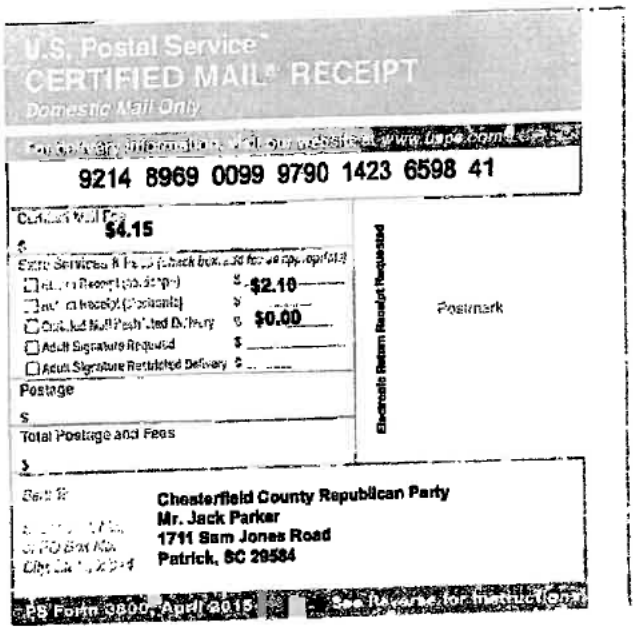
Please be advised that all appeals must be in writing and must follow the above directions. NO phone or e-mail appeals will be accepted. Please contact this office if we can provide further information.

Sincerely,

[redacted]

Lindsey New
Administrative Assistant

com300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$4.15

Return Receipt (electronic) $2.10
Certified Mail Restricted Delivery $0.00
Adult Signature Required
Adult Signature Restricted Delivery

Postage

Total Postage and Fees

Electronic Return Receipt Requested

Postmark

Chesterfield County Republican Party
Mr. Jack Parker
1711 Sam Jones Road
Patrick, SC 29584

PS Form 3800, April 2015

SC.GOV - SC State Ethics Commission: Public Disclosure and Accountability Reporting

NR of 2019 July 10th & Oct 10th

Electronic Filing

Operating Disclosure: Review

2019 April 10th Report Review NR of 2020, 2021, 2022 Jan 10th, Apr 10th July 10th & Oct 10th

Name: The Republican Party of Chesterfield County

Filing Type: Original, Filed

NR of 2023 Jan 10th & Apr 10th

Directions

To review information you have entered, click each tab below.

Summary | Contributions Expenditures

Demographic Information

1711 Sam Jones Road
Patrick, SC 29584
843.319.8238
Chesterfield County

Report Type

2019 April 10th Report

Contributions	This Period
A. Individual Contributions or other (+)	$0.00
B. In-Kind Contributions (+)	$0.00
C. Total Contributions (=)	**$0.00**

Expenditures	This Period
A. In-Kind Expenditures	$0.00
B. Expenditures (+)	$0.00
C. Total Expenditures (=)	**$0.00**

Balance of Contributions	This Period
A. Contributions on Hand (Beginning this Period)	$1,975.35
B. Total Contributions (This Period) (+)	$0.00
C. Total Expenditures (This Period) (-)	~~$0.00~~
D. Contributions On Hand (Period End) (=)	**$1,975.35**

Return to My Filings

If you are finished viewing this report, you can return to your list of filings by clicking the "Save" button below.

In Spartan for 2009 + 2010

Home
Republicans
Contacts
Events
News
Pictures

Welcome

Chesterfield County, South Carolina Republican Party






Weather Forecast

Total National Debt
$30,682,796,430,366

ONLINE COUNTDOWN

Proudly Growing the Strongest Republican County In South Carolina!

A Message From The Chesterfield County Republican Party Chairman

On behalf of all Republicans in Chesterfield County we would like to welcome you to our website. We are working hard to elect and support strong conservative candidates to lead Chesterfield County, South Carolina and America. A journey begins by taking a first step. It is my hope that you will join our efforts, visit a meeting and get involved. Through hard work and energizing our grassroots electorate we will continue to promote a better Chesterfield County. See our Calendar of events and join us!

Jack Parker
jparker@chesterfieldcountygop.org

Hit Counter
Omaha Steaks

Attachment F

CALLISON TIGHE

Ian T. Duggan – Lawyer
803-404-6900
IanDuggan@callisontighe.com

March 31, 2025

Hon. Alan Wilson, Attorney General
Hon. Robert D. Cook, Solicitor General
Rembert Dennis Building
1000 Assembly Street, 5th Floor
P.O. Box 11549 (29211)
Columbia, South Carolina 29201

RE: **Pre-Suit Settlement/Rule 408**
State Ethics Commission v. SC GOP, Case No.: 2022-144
Our File No.: 19258.001

Dear General Wilson, General Cook:

We represent the South Carolina Republican Party ("SC GOP") concerning an ethics complaint filed against it by the South Carolina State Ethics Commission ("Ethics Commission"). *See State Ethics Commission v. SC GOP*, Case No.: 2022-144. The SC GOP contests the allegations and seeks to resolve this matter short of litigation against the Ethics Commission. It appears you, the Ethics Commission and the SC GOP agree that S.C. Code Ann. § 8-13-1308(G) is facially unconstitutional with respect to campaign expenditures. Because it is facially unconstitutional for overbreadth, SC GOP believes it is also unenforceable to compel operating account disclosures. Rather than litigate these issues, I request pre-suit informal settlement discussions or potentially formal mediation to see if the parties may reach an amicable settlement.

BACKGROUND

The Ethics Commission asserts the SC GOP has failed to file certain operating account disclosures required by S.C. Code Ann. § 8-13-1308(G), part of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Act"). Specifically, the Ethics Commission asserts the SC GOP must file disclosure reports for its operating account only but not its campaign account, following a series of judicial opinions about the constitutionality of certain parts of the Act. The Ethics Commission relies principally on an opinion from your office dated June 4, 2019, "as to the constitutionality of enforcing certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Act) with regard to political parties, as that term is defined in the Act" ("2019 Opinion"). Yet not presented was a threshold question concerning disclosures by political parties[1] in South Carolina:

[1] "Political party" means an association, a committee, or an organization which nominates a candidate

> Whether the obligation in S.C. Code Ann. § 8-13-1308(G)[2] to file a "certified campaign report," which by definition includes "operation expenses,"[3] allows compelling only operating account disclosures when § 8-13-1308(G) is unconstitutionally overbroad and the operating account reporting obligation is not severable from § 8-13-1308(G).

We understand your office and the Ethics Commission agree that it is inappropriate and likely unconstitutional to require campaign account filings from political parties following opinions in *South Carolina Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp.2d 708 (D.S.C. 2010); *South Carolinians for Responsible Government v. Krawcheck*, 854 F.Supp.2d 336 (2012); and *Hill et al. v. Parfitt et al.*, 2020-CP-40-02636 (Richland County). In the 2019 Opinion, you stated:

> [A] political party, although generally thought of as an entity which supports the nomination or election of its candidates, does much more. A party also engages in issue advocacy. Thus, the answer to your question is unclear. Accordingly, we believe it is best to err on the side of caution, by continuing the Commission's present policy of non-enforcement of § 8-13-1308, and await clarification by the General Assembly.

See 2019 Opinion, p. 2. The 2019 Opinion also notes "the [Ethics] Commission suspended enforcement of § 8-13-1308 with regard to political parties' campaign accounts . . . [and] continued to enforce § 8-13-1308 with regard to political parties' operating accounts." The SC GOP agrees with this analysis on the constitutional issues—and therefore enforceability issues—presented by compelling campaign account disclosures from political parties. By taking the position asserted in the 2019 Opinion, your office and the Ethics Commission appear to agree that § 8-13-1308(G) is unconstitutionally overbroad on its face because it requires campaign account disclosures from political parties.

The 2019 Opinion and the Ethics Commission claim that operating account disclosures do

---

whose name appears on the election ballot as the candidate of that association, committee, or organization. SC Code Ann. § 8-13-1300(26).

[2] S.C. Code Ann. § 8-13-1308(G) provides, "[n]otwithstanding any other reporting requirements in this chapter, a political party . . . must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, "anything of value" includes contributions received which may be used for the payment of operation expenses of a political party . . . . A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.

[3] S.C. Code Ann. § 8-13-1300(34) defines "Operation expenses" as:

> . . . expenditures for salaries and/or fringe benefits for part-time, full-time, temporary and/or contract employees; meeting expenses, travel, utilities, communications and/or communications equipment whether leased or purchased, printing or printing services, postage, food and/or beverage, advertising, consulting services, and/or any other expenditures which are not an authorized contribution to a candidate, committee, or ballot measure committee.

not present these same constitutional concerns. While the SC GOP disputes that contention,[4] it is unnecessary to reach that issue under current South Carolina law. Nothing in the Act or § 8-13-1308(G) specifically provides an *independent* requirement to submit an "Operating Disclosure Report." Section 8-13-1308(G) only requires "campaign reports" that include "operation expenses." Section 1308(G) incorporates "subsections (B), (C), and (F) of § 8-13-1308," but each of these subsections mandates "campaign reports," not "operating disclosure reports":

> (B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8-13-1370.
>
> (C) Campaign reports filed by a candidate must be certified by the candidate. Campaign reports filed by a committee must be certified by a duly authorized officer of the committee.
>
> ***
>
> (F) Certified campaign reports detailing campaign contributions and expenditures must contain:
>
> > (1) the total of contributions accepted by the candidate or committee;
> >
> > (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
> >
> > (3) the total expenditures made by or on behalf of the candidate or committee;
> >
> > (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

S.C. Code Ann. §§ 8-13-1308(B), (C), (F). The Act speaks only to "campaign reports" that definitionally include "operation expenses." So there is no independent statutory authority to compel "operation expenses."

[4] Even if there were statutory support for the type of operating disclosure the Commission desires, we disagree with the 2019 Opinion that this type of mandate presents no constitutional problems. For instance, to borrow from the logic of the 2019 Opinion, "a court could well conclude that § 8-13-1308, as guided by § 8-13-1300(26)'s definition of "political party," infringes upon First Amendment speech. For one thing, contributions to a political party's ~~campaign~~ [operational] account . . . may be used for issue advocacy as opposed to the nomination or election of a candidate." However, we need not reach this dispute under the current § 8-13-1308(G) for the reasons set forth in this letter.

Attachment G

Brandon Newton
District No. 45 – Kershaw & *Lancaster* Counties
Lancaster County Delegation, Chairman
P. O. Box 2501
Lancaster, SC 29721

Committees:
Rules
Ways and Means

1105 Pendleton Street
518-B Blatt Building
Columbia, SC 29201

Tel. (803) 212-6874
BrandonNewton@schouse.gov

House of Representatives

State of South Carolina

October 13, 2025

VIA CERTIFIED U.S. MAIL
AND EMAIL (bcook@scag.gov)
The Honorable Alan M. Wilson
Office of the South Carolina Attorney General
c/o Robert D. Cook, Head of Legal Opinions
Rembert Dennis Building
1000 Assembly Street, 5th Floor
P.O. Box 11549 (29211)
Columbia, South Carolina 29201

RE: Request for Your Opinion on the Constitutionality of Requiring Political Party Operating Expense Reports under S.C. Code Ann. § 8-13-1308(G)

Dear General Wilson:

On June 4, 2019, you provided an opinion in response to a question from the South Carolina State Ethics Commission ("Ethics Commission") regarding limits on enforcing S.C. Code Ann. § 8-13-1308 as applied to a "political party"[1] after *South Carolina Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp.2d 708 (D.S.C. 2010). A copy of your June 4, 2019 opinion ("2019 Opinion") is enclosed. *Krawcheck* held certain portions of South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991 ("Ethics Act")[2] were unconstitutional as facially overbroad in violation of the First Amendment.

Background

Following the *Krawcheck* opinion, the Ethics Commission ceased all enforcement of § 8-13-1308(G) as applied to political party campaign accounts but continued to require operating expense reports from political parties under § 8-13-1308(G). Your 2019 Opinion encouraged the Commission to continue its "prudent" policy of non-enforcement until the General Assembly

[1] S.C. Code Ann. § 8-13-1300 (26) provides that "Political party" means "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization."

[2] *See* S.C. Code Ann. § 8-13-100, *et seq.*

addresses the statute's "constitutional problems." *See* Op. S.C. Att'y Gen., p. 20 (June 4, 2019). You noted that your office provides opinions on constitutionality while an enforcement decision is left to the Ethics Commission. *See id.*, p. 3 ("a governmental officer who takes an oath to uphold the United States Constitution may act on the ruling of the Attorney General as to the doubtful constitutionality of a particular statute if the courts have not acted") (citing Op. S.C. Att'y Gen., p. 4 (June 24, 2003)). Since the 2019 Opinion, the Ethics Commission has continued to require operating account disclosures from political parties.

S.C. Code Ann. § 8-13-1308(G) requires disclosure of a single "certified campaign report" that includes defined "operation expenses" and as well as campaign expenses. Section 8-13-1308(G) provides in pertinent part:

> Notwithstanding any other reporting requirements in this chapter, ***a political party . . . must file a certified campaign report*** upon the receipt ***of anything of value*** which totals in the aggregate five hundred dollars or more. For purposes of this section, ***"anything of value" includes contributions received which may be used for the payment of operation expenses of a political party*** . . . . A political party also must comply with the reporting requirements of subsections (B),[3] (C),[4] and (F)[5] of Section 8-13-1308 in the same manner as a candidate or committee.

(emphasis and footnotes added). It does not provide authority for separate reports, only "a certified campaign report."

---

[3] Section 8-13-1308(B) requires ongoing, quarterly certified campaign reports. *See* S.C. Code Ann. § 8-13-1308(B) ("Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8-13-1370").

[4] Section 8-13-1308(C) requires certification. *See id.* § 8-13-1308(C) ("Campaign reports filed by a candidate must be certified by the candidate. Campaign reports filed by a committee must be certified by a duly authorized officer of the committee.").

[5] Section 8-13-1308(F) prescribes the content of the certified campaign report:

> Certified campaign reports detailing campaign contributions and expenditures must contain:
>
> (1) the total of contributions accepted by the candidate or committee;
>
> (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
>
> (3) the total expenditures made by or on behalf of the candidate or committee;
>
> (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

See id. § 8-13-1308(F).

The 2019 Opinion and the Ethics Commission agreed that requiring campaign account disclosures under § 8-13-1308 posed constitutional problems and that it was best unenforced. *See* Op. S.C. Att'y Gen., p. 20 (June 4, 2019) ("In our opinion, the decision of the [Ethics Commission] to suspend enforcement of § 8-13-1308 because of First Amendment concerns, as expressed in *Krawcheck* and *Leake*, was a prudent one. There are indeed credible First Amendment issues raised by enforcement of § 8-13-1308.").

Because the question presented for your 2019 Opinion did not require it, the 2019 Opinion did not address 1) whether the Ethics Commission may require a report limited to operating expenses when § 8-13-1308(G) requires a single "certified campaign report," or 2) whether § 8-13-1308(G) is enforceable at all when you and the Ethics Commission agreed that § 8-13-1308 was likely constitutionally suspect and unenforceable.[6] Accordingly, it is still an open question whether § 8-13-1308(G), which requires only a single "certified campaign report," permits the Ethics Commission to require a report for only operating expenses when you have opined that § 8-13-1308(G) is likely unconstitutional and best left unenforced.

Question on which Your Opinion is Sought:

In light of your 2019 Opinion and the position of the Ethics Commission with respect to campaign reports (not required) and operating reports (required) for political parties, and in light of the requirement in § 8-13-1308(G) for a single "certified campaign report" combining campaign and operating expenses, I seek your opinion on the following question:

> **May the Ethics Commission require a political party to file an operating expense report when § 8-13-1308(G) requires a single "certified campaign report" combining campaign and operating expenses and § 8-13-1308(G) is unconstitutional?**

Thank you for your time and attention to this significant public constitutional question.

Respectfully,

[redacted]

Brandon M. Newton
House District 45

BMN/
Enclosure

[6] Your 2019 Opinion noted that campaign expenses present different constitutional concerns than operating account expenses, although this question was only addressed in passing because it was not central to the question asked. *See* Op. S.C. Att'y Gen., p. 17 (June 4, 2019).

Attachment H

ALAN WILSON
ATTORNEY GENERAL

October 12, 2026

The Honorable Brandon M. Newton
South Carolina House of Representatives
518-B Blatt Bldg.
Columbia, SC 29201

Dear Representative Newton:

You have asked for a follow up to our June 4, 2019, opinion regarding "the constitutionality of enforcing certain provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991… with regard to political parties, as that term is defined in the Act." In that opinion, there was a statement made in passing which has caused confusion.

Our 2019 opinion relied upon South Carolina Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708 (D.S.C. 2010). In Krawcheck, Judge Wooten held that the Act's definition of "committee" (§ 8-13-1300(6)), "simply swe[pt] too far and was facially unconstitutional in violation of the First Amendment." 759 F. Supp. 2d at 720. The Krawcheck Court emphasized that "only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable." id. at 714 (internal quotations omitted).

The 2019 opinion further stated the following:

> Political parties have a unique role in serving the principle of open, robust debate on public issues; they exist to advance the members' shared political beliefs.... A political party has its own traditions and principles that transcend the interests of individual candidates and campaigns; but in the context of particular elections, candidates are necessary to make the party's message known and effective, and vice versa.... While clearly a party's campaign account is most often used for the nomination or election of a candidate, that is only one "main purpose" for its use. Such account also may be used for issue advocacy. Where the election of or defeat of a candidate is not the "main purpose," but instead influencing elections are "a major purpose," a statute may well violate the First Amendment.

Op. S.C. Att'y Gen., 2019 WL 3243935 at *21 (June 4, 2019). Your letter notes that, following Krawcheck, "the Ethics Commission ceased all enforcement of § 8-13-1308(G) as applied to policial party campaign accounts but continued to require operating expense reports from political parties under § 8-13-1308(G)." According to your letter, "[s]ince the 2019 opinion, the Ethics

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Commission has continued to require operating account disclosures from political parties." You state that "[i]t is still an open question whether § 8-13-1308(G), which requires only a single 'certified campaign report' permits the Ethics Commission to require a report for only operating expenses when you have opined that § 8-13-1308(G) is likely unconstitutional and best left unenforced." Your analysis is correct.

The problem raised by the 2019 opinion is not the opinion's conclusion, but the brief comment therein that the Ethics Commission may continue to enforce § 8-13-1308(G) with respect to a political party's operating account. Section 8-13-1308(G) simply states in pertinent part that entities, such as a political party, must "file a certified campaign report" and include "...contributions received which may be used for the payment of operating expenses...." No further guidance is given by that provision.

Our bare statement in the 2019 opinion was that such provision "raises no constitutional issue." Op. S.C. Att'y Gen., 2019 WL 3243935 at *8 (June 4, 2019). As has been correctly pointed out to us, this statement was made with no analysis, and was far from the opinion's central conclusion. The Ethics Commission did not seek an opinion on this question. Yet, we appeared to opine upon a question not asked, but with no analysis. This was erroneous on our part.

You now ask that we review this question. Having considered the issue, we conclude that disclosure of a political party's operating account raises many of the same constitutional questions discussed at length in our 2019 opinion and runs the same constitutional risks without clarification from the General Assembly. In other words, it is impossible, based upon the current language of § 8-13-1308(G), to separate constitutional uses of a political party's operating account from unconstitutional ones. As Krawcheck made clear, "only unambiguously campaign related communications have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable." 759 F. Supp. 2d at 714. Yet, § 8-13-1308(G) is vaguely worded and offers no instruction as to how a party may segregate any issue advocacy activities which might be included as part of its operation expenses account.

Of course, a political party possesses fundamental First Amendment rights, just as others do. See Op. S.C. Att'y Gen., 2019 WL 3243935 at *8 (June 4, 2019). See also National Republican Senatorial Committee v. Fed. Election Comm., 146 S. Ct. 2404 (2026) [federal limits on political parties' "coordinate expenditures" with candidates violates First Amendment, overruling Fed. Election Comm. v. Colorado Repub. Fed. Campaign Comm., 533 U.S. 431 (2001)]. Thus, punishing a political party's issue advocacy invokes fundamental First Amendment concerns. Op. S.C. Att'y Gen., 2019 WL 3243935 at *21 (June 4, 2019). Applying this rule, it is easy to envision that a party may, in some instances, employ its operating account or operating expenses for issue advocacy purposes as well as for the election of candidates. Not only is an operating account used to "keep the lights on" and paying staff, but the party might easily prepare flyers or leaflets in support of or opposition to a particular piece of legislation its members might support or oppose,

paid wholly from its operating account. As we stated in the 2019 opinion, "[f]or one thing, contributions to a political party's campaign account… may be used for issue advocacy as opposed to the nomination or election of a candidate." The same is true with respect to the party's operating account.

There is, under present circumstances, simply no meaningful way to separate the wheat from the chaff, so to speak—no meaningful way to segregate constitutional activity from protected expression in a party's disclosure of its operating account. Political expression is, of course, afforded "'the broadest expression' under the First Amendment." Fusaro v. Cogan, 930 F. 3d 241, 251 (4th Cir. 2019) (quoting McIntyre v. Ohio Elections Comm., 514 U.S. 334, 336 (1995)). Clearly, a political party's operating account may be used to support issue advocacy, as well as the more routine costs and expenditures. As one court has stated, "…the court cannot separate constitutional applications to save a portion of the statute." United Food & Commercial Worker's Local 99 v. Bennett, 934 F. Supp. 2d 1167, 1206 (D. Ariz. 2013). And, as the Fourth Circuit found in N.C. Right to Life, Inc. v. Leake, 525 F. 3d 274, 284 (4th Cir. 2008), "[e]ven if some regulable speech falls within the ambit of… [the statute in question there], the statute's open-ended terms do not lend themselves to a principled construction…." Further, as Leake emphasized, and as is the case with regard to § 8-13-1308(G), the statute "threatens to regulate the ordinary political speech that is democracy's lifeblood." Id.

Thus, while our 2019 opinion suggested that no constitutional issue was raised by a political party's being required to report its operating account, such a suggestion was a mistake and we today revoke it. Again, in the words of Krawcheck, compelled disclosure of activity in order to be constitutional, must be "unambiguously campaign related" activity. Unless and until the General Assembly—not the Ethics Commission—clarifies this situation, and finds a way to separate what is constitutional activity from issue advocacy even in a political party's operating account, we suggest that § 8-13-1308(G) not be enforced at all.

I trust that this clarifies your issue.

Sincerely,

[redacted]

Robert D. Cook
Solicitor General